

# **CONGRESSIONAL DIGEST**

**PRO  
AND  
CON**

**November, 1933**

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## **The Increasing Power of the President**

**What the Constitution Has Provided  
Tracing the Steady Increase of Power  
How the Presidents have Viewed it  
Some Foreign Dictatorships of Today  
Grants of Power by Present Congress**

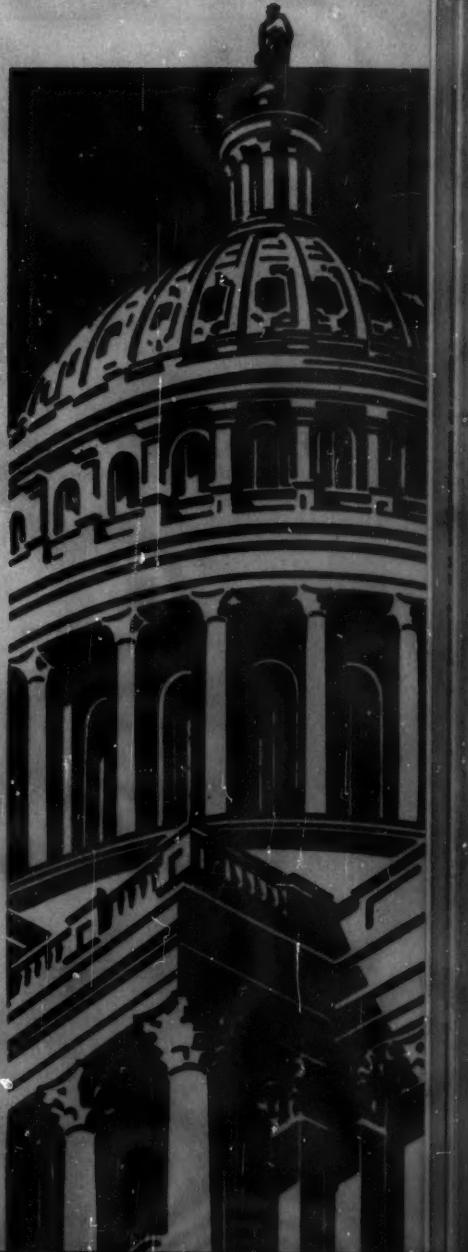
**Is Our Government Benefited by It?**

**Discussed Pro and Con by Government  
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**WASHINGTON, D.C.**

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# THE CONGRESSIONAL DIGEST

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N. T. N. ROBINSON  
Editor and Publisher

ALICE GRAM ROBINSON  
Founder

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# THE CONGRESSIONAL DIGEST

## The Question This Month:

### Is The Increasing Power of the President Improving the American Government?

#### Foreword

For nearly two hundred and fifty years the question of how much power should be given the Chief Executive of the Government of the United States has been, at intermittent and irregular periods, a topic of spirited and, at times, rancorous debate.

When the delegates from the Thirteen Colonies to the Constitutional Convention met at Philadelphia in 1787 to write the organic law for the United States, the question was, with them, one of the utmost importance, and when the First Congress met in New York in 1789, the question again arose and was the subject of long discussion.

Whenever a man of marked individuality and positive or aggressive tendencies has become President, his words or deeds have inevitably raised the question of whether he was usurping powers not given him by the Constitution.

From Thomas Jefferson down through Jackson, Lincoln, Cleveland, Theodore Roosevelt and Wilson, this controversy has cropped up in one phase or another.

Revived once more, it now revolves around the action by Congress in voting unusual emergency powers to President Roosevelt. The increasing number of dictatorships established in foreign countries since the World War have also had a bearing on the subject.

A majority of those advocating increased powers for the President as a permanent condition do so on the theory that modern economic conditions are such that only those nations with a strong centralized control over both politics and economics can survive. Hence, they point out, the American policy should be to have Congress vote these powers to the President instead of setting up a dictatorship of force by revolution.

Those opposing further grants of power to the Executive maintain that it means the abandonment of the very

principle on which the Constitution was founded—the principle of a republican representative form of government, a government of laws and not a government of men, and that it is yet to be proven that centralized executive power brings any particular boom to the rank and file of the citizens of a nation.

In presenting a discussion of this question the DIGEST has sought to throw light on the original conception of the powers of the Legislative and Executive branches in a brief summary of these powers as written into the Constitution. An article by Dr. Munro, on page 259, traces the gradual increase in Presidential powers as the country has grown. The views of certain of the Presidents on the powers of their office will be found beginning on page 261.

Brief sketches of existing foreign dictatorships and a listing of the emergency Acts by which Congress recently conferred emergency powers on President Roosevelt are also presented.

The Pro and Con discussion ranges all the way from arguments for and against the original provisions of the Constitution down to the advisability of permitting President Roosevelt to retain the powers he has been given.

That further discussion of this subject will come in Congress as soon as it convenes in January is anticipated. In the extraordinary session, while nearly all the emergency measures were passed by large majorities, there was sufficient opposition to indicate further battles.

The degree of this opposition, political observers think, will be determined by the economic condition of the country on the day Congress convenes.

Since the temper of Congress is apt to reflect the temper of the country at that time, the reaction of Senators and Representatives to the results obtained by President Roosevelt's exercise of his emergency powers is awaited with keen interest.

# A Summary of the Constitutional Powers of The Congress and The President

In setting forth the various duties and powers of the legislative and executive branches of the Federal Government the framers of the Constitution of the United States made provision for the exclusive exercises of some of these powers and the joint exercise of others. The exercise of some they made mandatory and of others they made permissive.

In the following listing of the powers of the Congress and the President, an effort is made to pick out the principal duties and powers of each branch, in the hope such segregation will be helpful to the student. In some instances the exact language of the Constitution is given, in others it is briefed.

The order in which these powers are set forth in the Constitution has not been followed, since the aim is simply to designate the mandatory and permissive duties as a guide. The grant of legislative powers, for the most part, is to be found in Article I of the Constitution while that of the Executive powers is found in Article II.

In this brief index, no effort has been made to cover the prohibitions of the Constitution, either in its body or in the first ten Amendments (the Bill of Rights) against legislative or executive invasion of the right of citizens.

## Powers of the President

### Sole Authority:

#### Must—

- be a natural born citizen of the United States.
- have attained the age of 35 years.

#### Shall—

- hold his office during the term of four years
- and, together with the Vice President, chosen for the same term, be elected by a number of Electors appointed by the States equal to the whole number of Senators and Representatives in each State.
- receive at stated times compensation for his services, which shall neither be increased nor diminished during his term of service.
- take the oath of office.
- be Commander in Chief of the Army and Navy of the United States and of the Militia of the several states when called into actual service of the United States.
- from time to time give to the Congress information on the state of the union, and recommend to their consideration such measures as he may judge necessary and expedient.
- take care that the laws be faithfully executed.

- commission all the officers of the United States.
- have power to fill up all vacancies that may happen during a recess of the Senate, by granting commissions which shall expire at the end of their next session.
- have power to grant reprieves and pardons for offenses against the U. S. except in cases of impeachment.

#### May—

- (on extraordinary occasions)—convene both houses of Congress or either of them, and in cases of disagreement between them as to time of adjournment, adjourn them to such time as he shall think proper.
- require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices.

#### Shall not—

- receive while President any other emolument (than his salary) from the United States or any state.

### Joint Authority with Congress:

#### Shall—

- have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur;
- by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court and all other officers of the United States whose appointments are not otherwise provided for (by the Constitution) and which shall be established by law.

## Powers of the Congress

### The Senate (Exclusive Powers):

#### Shall—

- choose its own officers, except the Vice President, who is presiding officer of the Senate.
- make its own rules.
- be Sole Power to try all impeachments (no person shall be convicted without two-thirds vote of the Senators present, and the penalty shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States).
- be sole judge of the elections, returns and qualifications of its members.

### The Senate (With the President):

Act upon all treaties negotiated and presented to it by the President. A two-thirds vote necessary to ratify.

### The House (Exclusive):

All bills for raising revenue must originate in the House but the Senate may vote amendments to revenue raising bills.

#### *Shall*

- be the sole judge of the elections, returns and qualifications of its members.
- choose its Speaker and other officers and make its own rules.
- have the sole power of impeachment.

### The Senate and House (Joint Exclusive Power):

The Congress is the only Federal Agency which has the power to deal with proposed Amendments to the Constitution, (1) by proposing an amendment whenever two-thirds of both houses shall vote to do so; (2) or by calling a convention to consider amending the Constitution upon application of the legislatures of two-thirds of the State.

### General Powers:

#### *Each House Must*

- keep a journal of its proceedings.
- present to the President for signature every bill passed by both houses. If the President vetoes the bill and Congress repasses it over his veto by a two-thirds vote of both houses, it becomes a law without the President's signature.

#### *The Congress shall have power*

- to lay and collect taxes; to borrow money on the credit of the United States; to provide for the common defense and general welfare of the United States; to regulate commerce with foreign nations and among the states; to establish uniform laws of bankruptcies; to coin money and regulate the value thereof; to establish uniform naturalization laws; to define and punish offenses against the law of nations; to declare war; to raise and support armies; to provide and maintain a navy; to suppress insurrections and repel invasions; to make copyright laws; to constitute tribunals, inferior to the Supreme Court of the United States; to provide for the punishment of counterfeiting the securities or current coin of the United States; to establish post offices and post roads; to exercise exclusive legislation jurisdiction over the District of Columbia, and other Federal territory; to make laws necessary for the carrying into execution of the foregoing powers.

## Tracing the Steady Increase of Executive Influence

From an article by William Bennett Munro,  
Professor of History and Government,  
California Institute of Technology. . . .

FORTY years ago James Bryce spoke of the Presidency as the greatest office in the world, to which any one could rise by his own merits. Since then the powers of the President have grown appreciably. They have now expanded far beyond what the framers of the Constitution intended. Today this Presidential hegemony, this overpowering authority, seems to be the outstanding fact in American Government. In the United States a legislative impasse does not stir the people to any uneasiness, because they know that the President, rather than Congress, is the pivot upon which the nation's government now revolves.

Almost every day we get illustrations of the ever-widening gap that exists between what the Constitution says and what it means, especially as concerns the relations between the executive and legislative branches of the government.

In the beginning it was never intended that the President should become a dominating factor in the shaping of national policy. To make sure of this the farmers of

the Constitution placed rigid limitations upon every important power that they gave to the Chief Executive. They gave him the right to make appointments, but only with the confirmation of the Senate. They empowered him to conclude treaties, but stipulated that a two-thirds vote of the Senate should be required for ratification. They gave him the veto power, but provided that Executive vetoes might be overridden by a two-thirds vote in both houses of Congress. They made him Commander-in-Chief, but limited the duration for which army appropriations might be made. Not a single important prerogative did they give to the President without a string tied to it.

It is no wonder that the founding fathers did this, for they had vividly in mind the experience of the American Colonies. The Constitution was framed in an atmosphere surcharged with animus against personal authority in all its forms.

But the lapse of years has shown the futility of mere paper checks upon the growth of Executive influence. The shackles have retarded, but have not prevented

the shifting of the centre of gravity from the Capitol to the White House. To some extent this has been accomplished by interpreting the Constitution differently from what its makers intended, but also to some extent by circumventing its provisions and by utilizing its silences. In the matter of appointments and treaties, for example, it was clearly intended that the President should seek the advice as well as the consent of the Senate. Decisions were to be reached by the huddle system, with the President acting as quarterback rather than as captain. But the Senate's advice, as every one knows, is never asked in advance, and Presidents frequently take umbrage when its consent is refused.

Repeated attempts, moreover, have been made by aggressive Presidents to evade the explicit limitations upon their appointing and treaty-making authority. They have done this by renewing recess appointments and by concluding international Executive agreements which have the effect of treaties.

Then there is the question of removals from office. The Constitution is silent on this matter. It provides that offices "shall be established by law," which apparently was presumed to mean that the laws would fix the term, salaries, duties and the methods of removing these officers. The Supreme Court has held that Congress cannot restrict the President's power to remove civil officers, even in the case of those who have been appointed with the Senate's concurrence. This is a most important enhancement of Presidential authority and one which carries it beyond the borders of Executive power in other countries.

The veto power affords an even better illustration. No other branch of Executive authority has been so widely explained beyond the original intent. The veto was given to the President as a weapon wherewith to protect himself against usurpations on the part of Congress. It was designed to be an emergency weapon which Alexander Hamilton predicted would be "used with great caution." And the first half dozen Presidents did use it most sparingly. During the initial forty years of the Republic only nine bills were vetoed, and in every case the veto was based upon some inherent defect in the measure, not upon the President's personal objection to it.

But Andrew Jackson interpreted the spirit of the veto power in a different way from his predecessors, and all subsequent Presidents have concurred in this view. They have distended the Executive veto into a general reviewatory power which virtually makes the Chief Executive a third chamber of Congress and entitles him to impose a suspensory negative on any measure that he deems inexpedient. It was taken for granted in 1787 that if the President ever used his veto imprudently a two-thirds vote in both houses would override it. But this assumption did not reckon with the growth of the party system, a development which made the habitual overriding of Executive vetoes a much more difficult matter than it was originally expected to be.

In general, then, the Presidency has been loosening the strings which were tied to it by the statesmen of 1787. It has lost none of its original powers. On the contrary, its prerogatives and influence have been greatly enhanced during the intervening years, not steadily, of course, but by fits and starts. Every vigorous President has pushed them up a notch or two, and there they have stayed.

Jackson, Lincoln, Cleveland, Roosevelt and Wilson have been outstanding figures in this accentuation of Presidential leadership.

The last thing that the framers of the Constitution intended the Presidency to be was a popular institution. They did not have it in mind that the President would be independent of Congress and a counterpoise to that body. They provided for his selection by Presidential electors; but their belief was that many names would be proposed and voted on by the electors, with the result that no one would get a clear majority. Then the election would be thrown into the House of Representatives, which would make the choice from among the five highest nominees.

Thus the President, as the choice of the larger branch of Congress, would be kept close to that body and in a measure dependent upon it.

But the emergence of two major parties, with their nominating conventions and their pledging of the electors in advance, has made it virtually certain that one of the two major candidates will obtain a clear majority of the electors. Accordingly, the House of Representatives never obtains a chance to do the electing. It has had no such opportunity for more than a hundred years.

The President is to all intents chosen by the people. This means that the President holds a mandate from the nation, not from the electors or from Congress, and his position in relation to the legislative branch of the government has been greatly strengthened thereby. The White House has become the biggest pulpit in the country. When the President desires to rally the people on his side in any controversy with Congress he has an enormous advantage in doing it, for he is the elect of the whole people, while Congressmen represent only the States and the people of the States.

Incidentally the radio has greatly strengthened the hands of any President who wants to put pressure on Congress. Congress, on the other hand, has no such facilities for talking back. Its leaders may try it, but the result is likely to be a babel of voices, and not one voter in a hundred will listen in.

The actualities of power in the case of the President are not to be found by reading the Federal Constitution. For example, the Constitution contains no hint that the President would be the national leader of his party, generally recognized as such, and entitled to sowd the tocsin of party allegiance at any time.

The great and fundamental weakness of the American political system is that it makes no definite provision for authoritative leadership within the ranks of legislative bodies themselves. In European countries this leadership is provided by Prime Ministers and Chancellors. The framers of the American Constitution seem to have assumed that Congress would lead itself, but such is a self-evident impossibility in a body which has now grown to be so large. Hence Presidential intervention in lawmaking has become essential as the only alternative to chaos. Presidents have wielded the whip not from choice but from necessity. Congress resents their executive instruction, as is natural, but one may safely predict that it will continue and will become even more assertive as time goes on.—*Extracts, see 1, p. 288.*

# How Some of the Presidents Have Interpreted the Executive Powers

## George Washington, 1789-1797=

As the first President of the United States, George Washington was called upon to put into immediate practice the executive powers of the Federal Government as provided for by the Constitution. On this point he wrote:

"In our progress toward political happiness my station is new, and, if I may use the expression, I walk on un-trodden ground. There is scarcely an action, the motive of which may not be subject to a double interpretation. There is scarcely any part of my conduct which may not hereafter be drawn into precedent. Under such a view of the duties inherent in my arduous office, I could not but feel a diffidence in myself on the one hand, and an anxiety for the community . . .

"It was to be a government of accommodation as well as a government of laws. Much was to be done by prudence, much by conciliation, much by firmness.

"Yet in a point of such vast magnitude, as that of the preservation of the peace of the Union, particularly in this very early stage of affairs, and at a period so little removed from an exhausting war, the public welfare and safety evidently enjoin a conduct of circumspection, moderation, and forbearance.

"It is important, likewise, that the habits of thinking in a free country should inspire caution in those intrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding, in the exercise of the powers of one department, to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism."

In 1794 after issuing several proclamations against Pennsylvanians who had organized the "Whiskey Rebellion" in opposition to the Revenue Act of 1791, Washington wrote:

"If, after these regulations are in operation, opposition to the due exercise of the collection (of the liquor tax) is still experienced, and peaceable procedure is no longer effectual, the public interest and my duty will make it necessary to enforce the laws respecting this matter; and, however disagreeable this would be to me, it must nevertheless take place.

"But if, notwithstanding, opposition is still given to the due execution of the law, I have no hesitation in declaring, if the evidence of it is clear and unequivocal, that I shall, however reluctantly I exercise them, exert all the legal powers with which the executive is invested to check so daring and unwarrantable a spirit. It is my duty to see the laws executed. To permit them to be trampled upon with impunity would be repugnant to it; nor can the government longer remain a passive spectator of the con-

tempt, with which they are treated. Forbearance, under a hope that the inhabitants of that survey would recover from the delirium and folly into which they are plunged, seems to have had no other effect than to increase the disorder."

## Thomas Jefferson, 1801-1809=

While, as pointed out by Norman J. Small, in his book "Some Presidential Interpretations of the Presidency," Thomas Jefferson was an advocate of strict interpretation of the Constitution and of the theory of States' Rights, his conduct, when he became President indicates a complete reversal of his pre-election position on these points. Concerning his action in making the Louisiana Purchase from France he wrote:

"To take a single step beyond the boundaries specifically drawn (around the powers in Congress) is to take possession of a boundless field of power, no longer susceptible of any definitions.

"I suppose they must then appeal to the nation for an additional article to the Constitution, approving and confirming an act which the nation had not previously authorized. The Constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union.

"The executive in seizing the fugitive occurrence, which so much advances the good of their country, has done an act beyond the Constitution. The Legislature in casting behind them metaphysical subtleties, and risking themselves like faithful servants, must ratify and pay for it, and throw themselves upon their country for doing for them unauthorized, what we know they would have done for themselves had they been in a situation to do it. It is the case of the guardian, investing the money of its ward in purchasing an important adjacent territory; and saying to him when of age, I did this for your good; I pretend to no right to bind you; you may disavow me and I must get out of the scrape as I can; I thought it my duty to risk myself for you. \* \* \*

"The question you propose, whether circumstances do not sometimes occur, which makes it a duty in officers of high trust, to assume authorities beyond the law, is easy of solution in principle, but sometimes embarrassing in practice. A strict observance of the written laws doubtless is one of the high duties of a good citizen, but it is not the highest. The laws of necessity, of self-preservation, of saving our country when in danger, are of a higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property, and all those who are enjoying them with us; thus absurdly sacrificing the end to the means. . . ."

While Jefferson had no serious controversy with Congress, since his party was in complete control of both houses during his service as President, he did oppose what he termed encroachments by the Supreme Court. When that body construed the provisions of the Alien and Sedition laws as constitutional, Jefferson nullified the decision by pardoning those involved. On this action he wrote:

"You seemed to think that it devolved upon the Judges to decide upon the validity of the Sedition Law. But nothing in the Constitution has given them a right to decide for the executive more than the executive to decide for them. Both Magistrates are equally independent in the sphere of action assigned to them. The Judges, believing the law unconstitutional, had a right to pass a sentence of fine and imprisonment, because the power was placed in their hands by the Constitution. But the executive, believing the law to be unconstitutional, were bound to remit the execution of it, because that power had been confided in them by the Constitution. That instrument meant that its coordinate branches should be checks on each other. But the opinion which gives to the Judges the right to decide what laws are unconstitutional, and what are not, not only for themselves in their own sphere of action, would make the judiciary a despotic branch."

On the relationship between the President and the Congress he wrote:

"The negative of the President is the shield provided by the Constitution against the invasions by the Legislature; (1) of the right of the Executive, (2) of the Judiciary, (3) of the States and State Legislatures . . . If the pro and con for and against a bill hang so even as to balance the President's judgment; a just respect for the wisdom of the Legislature would naturally decide the balance in favor of their opinion. It is chiefly for cases when they are clearly misled by error, ambition, or interest, that the Constitution has placed a check in the negative of the President."

#### Andrew Jackson, 1833-1841=

The principal expression of Andrew Jackson on the powers of the President was drawn forth in his controversy with the Congress in 1833, over his instructions to his Secretary of the Treasury, William Duane, to issue an order providing for the deposit of Federal funds in specified State Banks instead of in the Bank of the United States. Duane refused to comply with the instructions and President Jackson summarily dismissed him. In support of his action President Jackson wrote:

"The whole executive power being vested in the President, who is responsible for its exercise, it is a necessary consequence that he should have a right to employ agents of his own choice to aid him in the performance of his duties and to discharge them when he is no longer willing to be responsible for their acts. . . .

"(It was) settled by the Constitution . . . ; that as incident to that power the right of appointing and removing those officers who are to aid him in the execution of the laws, with such restrictions only as the Constitution prescribes, is vested in the President; that the Secretary of the Treasury is one of those officers; that the custody of the public property and money is an Executive function which, in relation to the money, has always been exercised through the Secretary of the Treasury and his subordinates; that in the performance of these duties he is subject to the supervision and control of the President,

and in all important measures having relation to them consults the Chief Magistrate and obtains his approval and sanction; that the law establishing the bank did not, as it could not, change the relation between the President and the Secretary—did not release the former from his obligation to see the law faithfully executed nor the latter from the President's supervision and control. . . .

"The dangerous tendency of the doctrine which denies to the President the power of supervising, directing, and controlling the Secretary of the Treasury in like manner with other executive officers would soon be manifest in practice were the doctrine to be established. The President is the direct representative of the American people, but the Secretaries are not. If the Secretary of the Treasury be independent of the President in the execution of the laws, then there is no direct responsibility to the people in that important branch of this Government to which is committed the care of the national finances.

#### Abraham Lincoln, 1861-1865=

Abraham Lincoln's views as to the powers of the President were expressed in connection with the emergency war powers he himself exercised. On this subject he wrote:

"This issue embraces more than the fate of these United States. It presents to the whole family of Man the question whether a constitutional republic, or democracy—a government of the people by the same people, can or cannot maintain its territorial integrity against its own domestic foes . . . It forces us to ask, Is there in all republics this inherent and fatal weakness?

"I consider that the central idea pervading this struggle is the necessity . . . of proving that popular government is not an absurdity.

"No organic law can ever be framed with a provision specifically applicable to every question which may arise in a practical administration . . . The whole of the laws are being resisted and all will be destroyed if not protected . . . I am to sacrifice one law in order to save the rest . . . The Constitution is silent on the emergency.

"I understood that my oath to preserve the Constitution to the best of my ability, imposed upon me the duty of preserving, by every indispensable means, that government, that Nation of which that Constitution was the organic law. Was it possible to lose the Nation and yet to preserve the Constitution? . . . I felt that measures, otherwise unconstitutional, might become lawful, by becoming indispensable to the preservation of the Union. Right or wrong, I assumed this ground, and now avow it.

"By the Constitution, the Executive may recommend measures which he may think proper, and he may veto those he thinks improper, and it is supposed that he may add to these certain indirect influences to affect the action of Congress. My political education strongly inclines me against a very free use of any of these means by the executive to control the legislation of the country. As a rule, I think it better that Congress should originate as well as perfect its measures without external bias."

#### Grover Cleveland, 1889-1903=

Grover Cleveland's important statement on the powers of the President was contained in a letter to Governor Altgeld, of Illinois, in 1893 in connection with the sending of Federal troops to Chicago to prevent striking employees of the Pullman Company from interfering with the transit

of trains carrying the United States mails. Governor Altgeld had protested that the State of Illinois could handle the strike and that the sending of troops was a violation of States' Rights. In reply President Cleveland wrote:

"Federal troops were sent to Chicago in strict accordance with the Constitution and the laws of the United States, upon the demand of the Post-Office Department that obstruction of the mails should be removed, and upon the representation of the judicial officers of the United States that process of the Federal Courts could not be executed through the ordinary means, and upon abundant proof that these conditions, which are clearly within the province of Federal authority, the presence of Federal troops in the city of Chicago was deemed not only proper but necessary; and there has been no intention of thereby interfering with the plain duty of the local authorities to preserve the peace of the city."

#### Theodore Roosevelt, 1901-1909=

After leaving the White House Theodore Roosevelt wrote the following views on the duties and powers of the President:

"I believed in invoking the National power with absolute freedom for every National need; and I believed that the Constitution should be treated as the greatest document ever devised by the wit of man to aid a people in exercising every power necessary for its own betterment, and not as a strait-jacket cunningly fashioned to strangle growth.

"The most important factor in getting the right spirit in my Administration, next to the insistence upon courage, honesty, and a genuine democracy of desire to serve the plain people, was my insistence upon the theory that the executive power was limited only by specific restrictions and prohibitions appearing in the Constitution or imposed by the Congress under its Constitutional powers. My view was that every executive officer, and above all every executive officer in high position, was a steward of the people bound actively and affirmatively to do all he could for the people, and not to content himself with the negative merit of keeping his talents undamaged in a napkin. I declined to adopt the view that what was imperatively necessary for the Nation could not be done by the President unless he could find some specific authorization to do it. My belief was that it was not only his right but his duty to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws. Under this interpretation of executive power I did and caused to be done many things not previously done by the President and the heads of the departments. I did not usurp power, but I did greatly broaden the use of executive power. In other words, I acted for the public welfare, I acted for the common well-being of all our people, whenever and in whatever manner was necessary, unless prevented by direct constitutional or legislative prohibition.

"In theory the Executive has nothing to do with legislation. In practice, as things now are, the Executive is or ought to be peculiarly representative of the people as a whole. As often as not the action of the Executive offers only means by which the people can get the legislation they demand and ought to have."

#### William Howard Taft, 1909-1913=

In his autobiography William Howard Taft wrote:

"The true view of the executive function is, as I conceive it, that the President can exercise no power which cannot be fairly and reasonably traced to some specific grant of power or justly implied and included with such express grant as proper and necessary to its exercise. Such specific grant must be either in the Federal Constitution or in an act of Congress passed in pursuance thereof. There is no undefined residuum of power which he can exercise because it seems to him to be in public interest, and there is nothing in the Neagel case and its definition of a law in the United States, or in other precedents, warranting such an inference. The grants of Executive power are necessarily in general terms in order not to embarrass the Executive within the field of action plainly marked for him, but his jurisdiction must be justified and vindicated by affirmative constitutional or statutory provision, or it does not exist.

"My judgment is that the view of . . . Mr. Roosevelt, ascribing an undefined residuum of power to the President is an unsafe doctrine, and that it might lead under emergencies to results of an arbitrary character, doing irremediable injustice to private right. The mainspring of such a view is that the Executive is charged with responsibility for the welfare of all the people in a general way, that he is to play the part of a Universal Providence and set all things right, and that anything that in his judgment will help the people he ought to do, unless he is expressly forbidden not to do it. The wide field of action that this would give to the Executive one can hardly limit."

#### Woodrow Wilson, 1913-1921=

In his various writings before and while he was President, Woodrow Wilson made the following comments on the powers of the President:

"There can be no mistaking the fact that we have grown more and more inclined from generation to generation to look to the President as the unifying force in our complex system, the leader both of his party and of the Nation.

"The President is expected by the nation to be the leader of his party as well as the chief executive officer of the Government, and the country will take no excuses from him. He must play the part and play it successfully, or lose the country's confidence. He must be Prime Minister, as much concerned with the guidance of legislation as with the just and orderly execution of law; and he is the spokesman of the nation in everything, even the most momentous and delicate dealings of the Government with foreign nations.

"The President is at liberty both in law and conscience, to be as big a man as he can. His capacity will set the limit; and if Congress be overborne by him, it will be no fault of the makers of the Constitution; it will be from no lack of constitutional powers on its part, but only because the President has the nation behind him, and Congress has not. He has no means of compelling Congress except through public opinion.

"The role of the party leader is forced upon the President by the method of his selection . . . He can dominate his party by being spokesman for the real sentiment and purpose of the country, by giving direction to opinion, by giving the country at once the information and the statements of policy which will enable it to form its judgment alike of parties and of men . . . If he lead the nation his party can hardly resist him."—*Extracts, see 12, p. 288.*

# How the Principal Foreign Dictatorships Are Operated Today

## Russia:

As a result of the revolution of November 7, 1917, the Bolsheviks or left wing of the Socialist Party, obtained control of Russia and set up a Communist Government. In 1919 the Third International, or Communist International, was organized to unite the Communist parties all over the world into one association.

Joseph Stalin, Chief Officer of the Third International, and head of the Communist party in Russia, is by virtue of these offices virtual dictator in Russia, although he holds no official position in the Russian Government. The Communist party is the only political party functioning in the U.S.S.R.

The Union of Socialist Soviet Republics, or U.S.S.R., according to the official statement of the Russian Government, is an association of Soviet Republics, based on the principle of voluntary centralism.

The Federal Government, representing the people within the Union, exercises complete authority in all matters relating to the central administration of the Union, viz., armed defense, foreign relations, transport and communications, political security. The Federal authority also exercises supervision to secure coordination and uniformity in regulations affecting economic matters, labor and the general well-being. The basis of the representative system rests upon the Soviets or elective councils.

The Soviets, which are councils of delegates of a working citizenship are designed to represent directly the productive life of the country. In the cities the basis of representation is mainly occupational, with the exception that persons in unorganized occupations (such as housewives) vote in geographic units. In the rural districts, where the productive life is homogeneous, the basis of representation is geographical.

Each village elects its local Soviet. The various village Soviets send delegates to a township (Volost) Soviet, which elects an executive committee to exercise administrative powers in its jurisdiction.

Similarly in the towns or cities delegates from the various productive groups of the community assemble in the town or city Soviet.

The District Congress of Soviets is composed of delegates from the village Soviets and from the Soviets of urban settlements of above 10,000 inhabitants. The delegates from the village Soviets are on the basis of one to 1,000 inhabitants, and in sparsely settled sections two or more villages may combine to send a delegate. The urban Soviets send one delegate to 200 electors.

The Provincial Congress of Soviets is composed of delegates from Urban Soviets, from Soviets of industrial settlements with a population of 5,000 and from the Volost Soviets.

In this fashion, from the original local or occupational unit, the Soviets pyramid up to the Congresses of Soviets representing the larger administrative divisions, the autonomous republics and areas, the constituent republics, and the entire Soviet Union.

The supreme organ of authority is the All-Union Congress of Soviets. This is composed of representatives of town and township Soviets, and of provincial Congresses of Soviets. It meets at least once in two years.

During the interval between the All-Union Congresses of Soviets, the supreme authority devolves upon the Central Executive Committee, consisting of the Council of the Union and the Council of Nationalities.

The Council of the Union is elected by the Congress from Representatives of the six constituent republics, in proportion to their population. It has, in all, 450 members.

The Council of Nationalities is formed of representatives of the Constituent and Autonomous Republics, five delegates from each, and of representatives of autonomous areas, one delegate from each, in all 139 members. The members of the Council are elected at the Republican and regional congresses of Soviets.

The Central Executive Committee meets three times a year. During the interval between sessions of the Central Executive Committee, the Presidium of the Committee is the supreme legislative, executive, and administrative organ of authority.

The Presidium of the Central Executive Committee consists of 27 members, nine representing the Council of the Union, nine representing the Council of Nationalities and nine elected by the two Councils in joint session.

The Council of People's Commissars (or Cabinet) is the executive and directive organ of the Central Executive Committee. Members of the Council are elected for two years.

## Italy:

In October, 1922, the Fascists or "Black Shirts" organized and led by Benito Mussolini, marched on Rome. The king named Mussolini Prime Minister. After organizing the executive branch of the Government, Mussolini and his supporters worked out an election law which, in the elections of April, 1924, gave them complete control of Parliament.

Mussolini is today not only Prime Minister, but is also Minister of Foreign Affairs, Minister of the Interior and Minister of Corporations. As Minister of Corporations he is head of the entire Fascist system of control.

Control of industry is exercised by the Italian Government in the endeavor to maintain continuity of production and to avoid overproduction and harmful competition, with a view to assuring employment at a fair wage to the

worker and a steady market at remunerative prices to the employer. Special attention is given to the development and protection of industries regarded as "essential to the national welfare."

Control is, in the first place, exercised through the corporate organization of the fascist state. This has been supplemented by regulatory legislation and by the establishment of financial organization under government supervision. To a considerable extent also the Government actively participates in industry as a stockholder. By these means the Government, directly, or indirectly, very largely controls all phases of Italian economy.

The smallest unit of the corporate organization is the Syndicate. Syndicates are established in each locality,—one for employers and one for workers in each industry or occupation. Membership is voluntary but fees must be paid by all whether members or not (on the theory that all share in the benefits). On the same basis the syndicates are organized into Provincial Unions. There are also National Federations representing the individual firms of a given industry (rather than the individual employers) and concerning themselves with the technical interests of that industry. These federations combine with the Provincial Unions in forming the National Confederations. There are 13 National Confederations.

Above the National Confederations and for the first time combining the interests of employers and workers and of the various industries and occupations is the National Council of Corporations. This Council is composed of delegates of the National Confederations, together with Government officials and experts, and is under the presidency of the Prime Minister. The Council is divided into 7 sections dealing with the various industrial and commercial branches. At the top is the Ministry of Corporations (headed by the Prime Minister) with general supervision over the whole organization (except for certain functions of the Ministry of Agriculture).

On the legislative side, the Chamber of Deputies, since 1929, has been composed of delegates selected by the National Confederation. (The Confederations submit lists of double the number to be selected from which the final selection is made by the Fascist Grand Council.)

All matters affecting the social and economic status of employers and workers come within the jurisdiction of this corporate organization. The syndicates concern themselves with questions of hours of work and of wages (strikes and lockouts are illegal), and with matters of technical and educational interests. They must also provide from their funds for social services (sickness and old-age benefits, etc.). The syndicates are largely autonomous though subject to certain restrictions (they must be legally recognized, their officers are subject to government approval, in extreme cases they may be dissolved).

#### Austria:

THE President of Austria is Wilhelm Nikles, but Engelbert Dollfuss, Chancellor and Minister of Agriculture and Forestry and head of the Christian Socialist Party, is virtual head of the country. Parliament is not in session. The President calls Parliament whenever necessary by announcing an election. Austria has a Socialist Government but the Heimwehr, a fascist party headed by Prince Starhemberg, is active and Chancellor Dollfuss is occupying a sort of middle ground at present.

#### Hungary:

WHILE Hungary is an independent kingdom the throne is vacant and the government is operating under a regent, Admiral Nicholas Horthy, appointed in September 30, 1932. Admiral Horthy operates through the usual ministry.

#### Germany:

THE election of January 30, 1933, gave the National Socialists, or Nazis, control of the Reichstag as a result of which the leader of their party, Adolph Hitler, was made Chancellor or Prime Minister. The Reichstag then voted the Chancellor extraordinary powers and adjourned.

Inasmuch as the organization of the German Government under the Nazi control has not been completed, its definite structure cannot be set forth at this time. It is understood, however, that the Nazi government will be along lines similar to the Fascist Corporate Government of Italy, except that where, in the Italian Government, there are parallel organizations of employers and employees, in Germany the employers and employees will be combined into one organization. As in the case of all dictatorship countries, the Nazi's aim to have but one political party.

#### Poland:

IN May, 1933, Professor Ignace Moscicki was elected President of Poland, which is operating under a Coalition Government, with the principal power of control exercised by General Josef Pilsudski, backed by the Government Party, which has 249 of the 444 members of the Parliament, as against 80 members for the Left Socialist and 63 members for the Right Nationalists, with the rest distributed among half a dozen or so other parties.

General Pilsudski has been twice Premier and in 1926 was elected President but declined to serve. He is Commander-in-Chief of the Army and takes Civil positions only when he feels it necessary. At present he is a member of the Cabinet as Minister of Military Affairs and is generally classed in European Diplomatic circles as a sort of dictator-behind-the-scenes.

#### Turkey:

IN October, 1923, Gazi Mustafa Kemal Pasha was elected President of the Turkish Republic by the Popular Party, the only political party in Turkey, through the Grand National Assembly, a single-chamber parliamentary body. The election was for an indefinite term of office. Kemal Pasha conducts affairs through a regular ministry.

#### Yugo Slavia:

IN 1929 King Alexander I abrogated the Constitution, dispersed the Parliament and abolished all existing political parties. The King governs with dictatorial powers, assisted in the administration of affairs by a regular ministry. While all the old political parties were abolished there is no prohibition against the organization of new parties.

# Acts of Present Congress Granting Emergency Powers to President Roosevelt

## *The Emergency Banking Act*

Act of March 9, 1933 (73d Congress, Public Law No. 1) to provide relief in the existing national emergency in banking. Under this act the President is authorized to regulate or prohibit transactions in foreign exchange, transfers of credits between, or payments by, banking institutions, the export, hoarding, melting or earmarking of gold or silver coin or bullion. Regulations, etc., prescribed by the Secretary of the Treasury concerning transaction of banking business by member banks of the Federal Reserve System, to be approved by the President.

Title II, cited as the "Bank Conservation Act," provides for the appointment of conservators by the Comptroller of the Currency where he deems it necessary in order to conserve the assets of banks for the benefit of depositors and other creditors thereof.

Under this act the President declared a bank holiday, appointed bank conservators, declared an embargo on gold shipments and took various other steps toward financial stabilization.

The arrangement of various loans and credits and other operations under this act are being carried out through the Secretary of the Treasury, the Federal Reserve Board and the Reconstruction Finance Corporation.

## *The Economy Act*

Act of March 20, 1933 (Public Law No. 2) to maintain the credit of the United States Government. President authorized to regulate rates of pensions payable to veterans, to prescribe degrees of disability to be recognized, and to approve claims for benefits filed with the Veterans' Administration.

By this act the President is further authorized to determine the reduction in cost of living and to reduce compensation of government officers and employees accordingly, except that such percentage of reduction shall not exceed 15 per centum.

This act is administered by the President through the heads of the various executive departments, with the Director of the Budget as the principal administrative officer.

## *The Reforestation Act*

Act of March 31, 1933 (Public Law No. 5) for the relief of unemployment through the performance of useful public work. This act authorizes the President to provide for employing unemployed citizens of the United States in construction, etc., of works of a public nature in connection with the reforestation of lands belonging to the United States, for the purpose of relieving the acute condition of widespread distress and unemployment.

Under this act the Civilian Conservation Corps was established to clear up the National forests. The recruiting of young men for this work is done by the Department of Labor; the purchase of supplies and building of camps and the care of the men when not at work is in charge of the Army and the management of the Camps is conducted by the Bureau of Forestry, of the Department of Agriculture and the National Park Service of the Department of the Interior. A special agency, "Emergency Conservation Work," was set up by the President, with Robert Fechner as administrator, for general supervision over the entire project.

## *The Farm Relief Inflation Act*

Act of May 12, 1933 (Public Law No. 10) to relieve the national economic emergency by increasing agricultural purchasing power, etc.

Title I of the act provides for the acquisition of cotton by the Secretary of Agriculture, and deals with the powers of the Secretary relating to the reductions in the production of agricultural commodities.

Title II entitled the "Emergency Farm Mortgage Act of 1933" provides for the issuance of bonds by Federal land banks, the purchase, reduction, and refinancing of farm mortgages, etc.; limitations on joint-stock land banks to issue tax-exempt bonds, etc.; loans by the Reconstruction Finance Corporation to drainage districts, levee districts, irrigation districts, etc., organized under the laws of any State.

Title III authorizes the President to direct the Secretary of the Treasury to purchase and hold Treasury bills or other obligations of the United States Government from the federal reserve banks in an aggregate sum of \$3,000,000,000; to direct the Secretary of the Treasury to issue United States notes not to exceed \$3,000,000,000 for the purpose of meeting maturing Federal obligations, etc.; by proclamation to fix the weight of the gold dollar and also the weight of the silver dollar, to accept silver in payment of debts due from foreign governments.

This act, as its provisions set forth, is being administered in part by the Secretary of Agriculture, the Federal Land Banks and the Secretary of the Treasury. It is under this act that the crop and livestock production is being curtailed and under which the President is authorized to put currency inflation into effect.

## *The Federal Emergency Relief Act of 1933*

Act of May 12, 1933 (Public Law No. 15) authorizing a grant of \$500,000,000 from the funds of the Reconstruction Finance Corporation in addition to the funds authorized under the Emergency Relief and Construction

Act of 1932 (47 Stat. 709) to provide for the more effective cooperation of the Federal Government with the several States and Territories and the District of Columbia in furnishing relief to their needy and distressed people.

Under this act the Federal Emergency Relief Administration has been set up to handle the distribution of funds for the Reconstruction Finance Corporation. Harry L. Hopkins is administrator.

#### *The Tennessee Valley Authority Act of 1933 (Muscle Shoals)*

Act of May 18, 1933 (Public Law No. 17). Corporations created for the operation of properties at Muscle Shoals in the interest of the national defense and for agricultural and industrial development, etc. Sec. 5 (n) authorized the President to lease to a farm organization nitrate plant numbered 2 and Waco Quarry for a term not to exceed fifty years, to use the property exclusively for the manufacture of fertilizer. Section 10 empowers the board to sell the surplus power not used in its operations to States, corporations, individuals, etc.

Under this act the President set up "The Tennessee Valley Authority," with Dr. Arthur E. Morgan as chairman.

#### *The National Industrial Recovery Act*

Act of June 16, 1933 (Public Law No. 67) Title I authorizes the President to establish agencies, to approve codes of fair competition for trade or industry as represented by one or more trade or industrial associations or groups, to enter into agreements with labor organizations, etc., relating to trade or industry, if in his judgment such agreements, etc., will aid in the removal of obstructions to the free flow of interstate and foreign commerce, promote the fullest possible utilization of the present productive capacity of industries, and increase the consumption of industrial and agricultural products by increasing purchasing power.

Title II authorizes the President to create a Federal Emergency Administration of Public Works; under the direction of the President, and Administrator is to prepare a program of public works which shall include construction and improvement of public highways, parkways, public buildings, the development of natural resources, development of water power, construction of river and harbor improvements, etc.

Sections 211-219 provide for the imposition of taxes on foreign and domestic corporations.

The Secretary of the Treasury is authorized to borrow, from time to time, such amounts as may be necessary to meet the expenditures authorized by this Act. Section 220 authorizes an appropriation of \$3,300,000,000 for carrying the purposes of the Act.

Under this act the President has set up more administrative agencies than under any other of the emergency acts.

On June 16, the day he signed the bill, he established the National Recovery Administration (N.R.A.) with Brigadier General Hugh S. Johnson as Administrator for Public Recovery. He also established the Special Industrial Recovery Board, consisting of the Secretary of Commerce, chairman, the Attorney General, the Secretaries of the Interior, Agriculture, Labor, the Director of the Budget, the Administrator for National Recovery and the chairman of the Federal Trade Commission.

As of October 15, 1933, the N.R.A. has negotiated and put into operation 57 "codes of fair practice" with most of the major industries covered.

Authoritative figures on the actual number of persons put back to work as a result of the N.R.A. are not available but a nation-wide check up is being made as the result of which the N.R.A. expects to have accurate records.

Under the authority given him in Title I of the act, the President has set up the National Labor Board, with Senator Robert F. Wagner of New York as chairman, to pass on labor disputes under the various codes; has delegated to the Secretary of Agriculture all functions and powers (except those affecting hours of work, rates of pay and labor conditions) with respect to trades and industries engaged in handling milk and its products, tobacco and all foods and foodstuffs, and has set up the Administration of the Petroleum Industry, designating the Secretary of the Interior as Administrator and the Department of the Interior as the Federal agency for carrying out the work.

Under Title II of the Act the President set up the Federal Emergency Administration for Public Works with the Secretary of the Interior as Administrator and has appointed a Special Advisory Board composed of the Secretary of the Interior, chairman, and the Secretary of War, the Attorney General, the Secretaries of Agriculture, Commerce, Labor, the Director of the Budget, and an assistant secretary of the Treasury.

#### *The Farm Credit Act of 1933*

Act of June 16, 1933 (Public Law No. 75) directs the Governor of the Farm Credit Administration to organize twelve corporations to be known as the "Production Credit Association" from which farmers may borrow money. The Governor is also directed to organize twelve "Banks for Cooperatives" which shall make loans to cooperative associations for any of the purposes and subject to the conditions and limitations set forth in the Agricultural Marketing Act.

The Act also provides for miscellaneous amendments to the Federal Farm Loan Act.

Under this Act the former Federal Farm Board was abolished and the Farm Credit Administration set up, with Henry Morgenthau, Jr., as Director.

#### *The Independent Offices Appropriation Act, 1933-34*

Act of June 16, 1933 (Public Law No. 78). Sec. 8 (a) of this act provides that employees of the U. S. or the District of Columbia involuntarily separated from the service prior to July 1, 1935, having had an aggregate period of service of at least thirty years, shall be entitled to an annuity less  $3\frac{1}{2}\%$  thereof. The  $3\frac{1}{2}\%$  deduction shall cease, however, when the annuitant attains the retirement age prescribed for automatic separation.

Sec. 9 (a) authorizes the heads of the several executive departments and independent establishments of the Government and the municipal government of the District of Columbia to furlough without pay, in rotation, any officers and employees in any service where the number of such is in excess of the number necessary for the requirements of such service.

This Act ties in with the Economy Act in giving the President authority to reduce expenses in the various in-

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PRO

# Are the Increasing Powers of the President Improving the American Government?

by Professor Rexford C. Tugwell

United States Assistant  
Secretary of Agriculture

THERE is no prearranged field of government which is set apart from the circumstances of those who are governed. As the circumstances of the people change, functions of government change. These are trite declarations of principle, but they are significant when one undertakes an appraisal of the legal and economic commitments of the new Administration.

Is it legally proper, if it is economically wise, for the national government to assume the leadership of private enterprise; to regulate terms and conditions of employment, including wages; to prescribe permissible trade practices; even, if need be, to interfere with prices? Since these measures are related to the control of interstate and foreign commerce, attacks upon their constitutional validity must be upon broader grounds than that they violate theories concerning the powers of the federal and state governments. The doctrinal antagonism is broader than this: in terms of unconstitutionality, the economic theory of "free competition" is employed to attack these measures, this "governmental interference" as we call it. The Constitution is used as a holy of holies within which the ugly practices of free competition can be hid from vulgar eyes.

As a matter of early national history, we may admit that unrestrained competition may have been a useful economic creed.

But I must insist that our circumstances have changed. Our economic course has carried us from the era of economic development to an era which confronts us with the necessity for economic maintenance.

This era of maintenance is the era of our present and future existence. The inextricable interdependence of its multiple factors demands a new control, a control designed to conserve these ability to function, a control to conserve and maintain our economic existence. As the Government "interfered" in days of free-competitive exploitation—with bonuses for production, tariff, grants of natural resources, anti-trust acts, and prescriptions for raising two blades of grass where only one grew before—I have felt that the Government must now intervene in other ways to conserve and maintain the industrial system which was developed here.

Must I believe that Mr. Roosevelt's measures are contrary to the "American way," contrary to the public welfare, contrary to the Constitution, when they are measures designed to eliminate the anarchy of the competitive system, to ameliorate the recurrence of our spirals of inflation and deflation? Is his "partnership with indus-

## Arguments Favoring

try" so contrary to the spirit of our institutions that it must be forbidden?

This is not an unknown phenomenon in economics. We once had iron laws of wages which we buttressed by the Malthusian notion that war, famine, and pestilence were the natural controls over standards of living. No one believes that any more about population. Shall we continue to believe that panics, deflation, and bankruptcy are our only remedy for over-productivity in industry? Or shall we, by similar ingenuity, control over-capacity and reconstruct purchasing power? The Malthusian theory did not prevent the one; I doubt if the theory of free competition will prevent the other.

Let me summarize: In this era of our economic existence, I believe it is manifest that a public interest well within the functions of government and well within the authority of government under our Constitution, commands the protection, the maintenance, the conservation of our industrial faculties against the destructive forces of unrestrained competition. And certainly the Constitution was never designed to impose upon one era the obsolete economic dogma which may have been glorified under it in an earlier one. Today and for tomorrow our problem is that of our national economic maintenance, for the public welfare, by governmental intervention—any theory of government, law, or economics to the contrary notwithstanding. Hence the National Recovery Act and the Agricultural Adjustment Act of the Administration.

We turn now to a consideration of the measures enacted in the last special session of the Congress, vesting in the President broad powers for the administration and execution of laws enacted by the Congress. Reference may be made, for illustrative purposes, to the powers granted to the President under the Economy Act and under the appendage to the Agricultural Act which is popularly known as the inflation amendment. Of what may even the theorist of government, law, or economics complain? Has the theory of a republican form of government, explicit in the Constitution, been violated by the new Democratic President and Congress? Has the philosophy of "checks and balances" within the Federal Government been infringed?

These questions naturally arise. They command respect, for they concern our faith in the organization and functioning of our national government. But must faiths, political more than economic, be preserved at all events—that is, in disregard of the obviously necessary requirements of the public welfare? May our faiths in "checks

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# Are the Increasing Powers of the President Improving the American Government?

CON

## Arguments Opposing

BEGINNING with March 9, 1933, legislative history in America has been made by the recommendation and dictation of the Chief Executive and not by Congress, initiating the policies and measures which have been adopted. If the President of the United States pursues the course opened to him by Congress, at his request, we will be well on the way to new and strange methods in dealing with industries, public-service corporations, farming, and all the different elements which go to make up the complex order of our society.

Our governmental and national activities that started with the first administration and have continued down to the present time depended upon individual initiative; each individual had the opportunity to blaze his own path. This is a fundamental and basic principle which has directed the destiny of this Government, and which has heretofore controlled and guided us, and served as a protection to the individual citizen in his freedom of action, in either an individual or collective way in the embarkation of business activities by fostering and not fathoming any business in which he or they might engage.

The new policy has been suggested by the President, and has been promptly ratified by the majority of the Congress, abdicating their responsibility with the hope no doubt that it would solve the problems of the depression. Instead we may awaken to the fact that by our continued disregard of the Constitution of the United States we have created a government whose principles are foreign and unnatural and which will deny to the individual man his freedom of action and his freedom of living and working out his ideas, such as he enjoyed under the Government of his forefathers.

During the past months there has come to public notice a group of college professors who, through the influence which they apparently have with the Chief Executive, are credited with proposals for legislation so different from what we have considered in the past that it is worth while to pay some attention to these men, the attitude they take, and the legislative proposals they openly advocate.

During the discussion on the farm bill Members of the Senate became familiar with the name of Mordecai Ezekiel.

I understand that Mordecai Ezekiel, following an extensive study of Soviet Russian ideas on agriculture, succeeded in securing a place high in the councils of the old Farm Board. When the present administration juked the Farm Board he found refuge as one of the pioneer members of the "brain trust."

by Hon. Henry D. Hatfield

United States Senator,  
West Virginia, Republican

The passage of the farm bill carried with it a new era in American legislation and the idea of dictatorship, which to my mind has been, is, and will be repugnant to every American.

The presentation of drastic and untried methods of government emanating from the White House has come so fast that I question whether the American people yet realize how our Government machinery now operates or what dislocations are taking place which are most strange and unnatural and contrary to the policy heretofore adopted in severe epochal periods of depression, far more disastrous than this one.

I desire to call attention to an incident during the depression of 1837 which may be found in the files of old newspapers of that period:

"At an auction sale in 1837 in Muskingum County, Ohio, horses, cows, and oxen brought but a dollar per head, and hogs 6½ cents each. At an auction sale in Pike County, Mo., 2 horses, 2 oxen, 5 cows, 2 steers, 1 calf, and 24 hogs brought \$3.75. The report shows that these animals were sold separately except the 24 hogs, which were sold in one lot, and brought 25 cents for the bunch."

I recite this historical fact to demonstrate that, comparatively speaking, the conditions which confront the American people today are no exception to those that confronted the generations of former days during the periodic visitations of depression. I know of no incident similar to that I have just read happening during the present depression.

A few days ago I secured from the Library of Congress a book written by Prof. Rexford G. Tugwell.

It is common knowledge that Professor Tugwell and his associates, Professors Moley, Berle, Ezekiel, and others, seemingly have a controlling or at least a decided influence with the President of the United States; and through the influence of the White House they seek to force through the Congress legislative proposals of a character far different from that which might well be termed the "American idea of voluntarism."

A perusal of the book written by Professor Tugwell justifies the belief that the writer and his associates openly advocate the socialization of industry through placing control of American industry and the American people therein engaged, in the hands of a body of intellectuals or technicians acting as agents for the people through designation of the White House.

Professor Tugwell's book takes to task the failure of American business and American labor. Yet, perhaps

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## Tugwell Cont'd

and balances" yield to necessity, or even to expediency? If these faiths, and this necessity for more expeditious governmental action, are to clash, must we sacrifice efficiency or shall we establish a new faith?

Let me briefly discuss what the lawyer would call the "merits of the case." The President presumably sought, in asking to be vested with broad permissible powers, to attain a maximum of efficiency in the execution and administration of the laws of Congress. In view of the complex and multiple aspects of the situation which we then faced, no single statute could be adequate; no series of statutes could be adequate. We had, remember, to repair disaster, imminent, pressing. The actions called for, if they were to be left to the traditional legislative and enforcement procedures, were manifestly not going to be in time, and were likely not to be sufficiently drastic.

To meet these demands for coördinated administration and negotiation looking to our economic resuscitation, the President has accepted the responsibilities which the Congress has vested in him. The laws of the new Administration are the laws of the Congress; it lies with the Congress to alter, amend, or repeal them. The President is to execute and administer them. Certainly it is not patent wherein our Constitution has been violated, our republican form of government emasculated, or our philosophy of "checks and balances" for the Federal Government infringed.

"Constitutionality" is talked about as if it were a tangible fact, undeviating and precise. The wiser lawyers of my acquaintance agree with me in recognizing the folly of such a notion. Constitutional law, at any given time, is the then current theory of what ought and what ought not to be done under the Constitution, a legalistic expression of the prevailing political and economic philosophy.

Thus viewed, the constitutional law of the latter part of the nineteenth century expressed itself not merely in the decisions and opinions of the United States Supreme Court, in legislative debates, in textbooks. It found definite articulation in legislation—notably in the Sherman Act and its family of anti-trust statutes. Significantly, in the recent Congressional discussions of the Administration's program, some of the elder statesmen frequently approached any proposal to abate the antitrust laws as if that involved a constitutional change. In a profound sense they were correct; such a proposal did mean a change in the theory of the proper use of the powers conferred by that tersely worded paper called the Constitution.

And here let me say that it is my view that what we have done is to rediscover the Constitution, to revitalize the powers it was intended to create, many of which had been obscured in the interest of economic aims and purposes which have now become oppressively obsolescent. Those who wrote that great state paper were wise and bold. The best of them, although they disagreed on details, were struggling to meet a crisis which, in some important respects, was not unlike that now confronting us. They were fighting economic disorganization fostered by inadequate centralization.

Governmental action was considered as, at best, a necessary evil. To check-and-balance government to a point just short of inaction was the desideratum. The prevailing constitutional theory—and therefore the constitutional law—corresponded to this prevailing economic outlook.

At the center of this constitutional law was the conception of government as policeman. Government was to stop flagrant abuses, and no more. It should be negative and arresting, not positive and stimulating. Its rôle was minor and peripheral. It was important in this one sense: It was to prevent interferences with the competitive system. Behind that system (so it was said and thoroughly believed) was an invisible hand which guided warring business men to the promotion of the general welfare.

The jig is up. The cat is out of the bag. There is no invisible hand. There never was. If the depression has not taught us that, we are incapable of education. Time was when the anarchy of the competitive struggle was not too costly. Today it is tragically wasteful. It leads to disaster. We must now supply a real and visible guiding hand to do the task which that mythical, non-existent invisible agency was supposed to perform, but never did.

Men are, by impulse, predominantly coöperative. They have their competitive impulses, to be sure; but these are normally subordinate. *Laissez-faire* exalted the competitive and maimed the coöperative impulses. It deluded men with the false notion that the sum of many petty struggles was aggregate coöperation. Men were taught to believe that they were, paradoxically, advancing coöperation when they were defying it. That was a viciously false paradox. Of that, today, most of us are convinced, and as a consequence the coöperative impulse is asserting itself openly and forcibly, no longer content to achieve its ends obliquely and by stealth. We are openly and notoriously on the way to mutual endeavors.

And there is the importance of the rediscovery of the Constitution. We are turning our back on the policeman doctrine of the government, and recapturing the vision of a government equipped to fight and overcome the forces of economic disintegration. A strong government with an executive amply empowered by legislative delegation is the one way out of our dilemma.

I have spoken of the resurgence of the coöperative impulse. It has long struggled for more active expression. That struggle might have been unsuccessful. But it is our great good fortune that at the moment when the failure of that struggle would almost surely have meant total collapse, there came into the Presidency a man deeply moved by the coöperative impulse. And, above all, it is our good luck that that man was one whose integrity is beyond question.

That point cannot be over-emphasized. The success of the new spirit demanded a restoration of power to the executive. The executive branch of the government is not a piece of mechanism; it is a body of men. If the new program is to succeed, those men must be wise, able, ingenious, and honest. The shift to a new design for government would be a total failure if they were otherwise.

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**Hatfield Cont'd**

without realizing it, Tugwell describes a government that he considers, "as near Utopia as human beings are ever likely to get," and in this description portrays the United States as the only nation in the world which could qualify with his suggestions of a modern Utopia. What brought about this condition of Utopianism in America if it was not those stalwart men who blazed the path of civilization under the Stars and Stripes?

The "new deal," wherein control of the Government of the United States has been turned over to a group of college professors is, to my mind, far different from what the people of the United States had reason to expect when they elected Gov. Franklin D. Roosevelt last November. Inquiries have reached my office seeking information as to the necessity for this drastic change in governmental procedure without the Congress of the United States being consulted.

The President of the United States, in a radio address to the American people, in substance apologized for the dictatorial powers now possessed by the Chief Executive, and, at considerable length, suggested that the Chief Executive had had these dictatorial powers foisted upon him by the Congress of the United States, for whom he was merely acting as an agent.

The President's statement was most misleading and contrary to known and undisputed facts. So far as I can recall, since the inauguration of the "new deal" on March 4, no legislation has been enacted which was not drafted by the brain trust and sent to the Congress from the White House with the possible exception of the Glass banking bill. All the legislation wherein the Congress has created a dictatorship over our monetary system, such as the dictatorship over American agriculture, the dictatorship over American industry, and the dictatorship over American railroads, has emanated from the White House.

Less than 2 weeks after explaining to the American people that the Congress had foisted dictatorial power upon the President, we find the President appointing a dictator over American industry before the bill creating such dictatorship has even been considered by either the House or the Senate.

The press at times has referred to the "brain trust", and the influence of the brain trust on the activities of the White House. The press seemingly have yet to realize that the "brain trust", or the majority thereof, are professed Socialists who, realizing that the American people will not tolerate Socialism in America, now operate under what is known as the "New Democracy" or "The New Deal."

The President in a message to the Congress insisted that in order to balance the Budget we must deprive needy veterans of \$400,000,000 each year. Since that legislation passed we have, through one act or another, created thousands of jobs—all outside of the Civil Service—to be filled by political heelers.

During the Hoover regime the Democratic congressional leaders were often loud in their criticism of the cen-

tralization of power, or the attempted usurpation by the Chief Executive of the power vested in the Congress under the Constitution. If such criticism was based upon principle and not on political expediency, why, then, are the critics of centralization of governmental control so silent now? Surely the present occupant of the White House has eliminated not only State lines but in addition thereto he has virtually taken upon himself, with the help of the Democrats who still look hungrily at the patronage table, all political and economic power in the United States.

Last November the people of the United States placed the Democratic Party—the party of State's rights—in complete control of all branches of our Government. In so doing the people had a right to assume that control of the Government would be vested in practical men; men well versed in statecraft and in American legislative procedure; men believing in upholding American traditions and the American Constitution. At no time in the history of the United States has legislation been proposed by the Chief Executive or been enacted which so openly and so flagrantly overrode State borders and centralized complete control of the Government of the United States in one individual.

The Democracy of the present day praises the attitude of Jefferson and Jackson, yet it is common knowledge that Jefferson and Jackson fought for local control, community and State, and opposed the centralization of government at Washington.

The "new deal", while it sings the praises of Jefferson and Jackson, is more in keeping with the preachings of Norman Thomas, Stalin, Mussolini, and Hitler.

The people of the United States last November had the opportunity of placing a Socialist in the White House, but the opposition of the American people to socialism is so strong that the presidential candidate of that party received only 2 per cent of the total vote cast. While the American people were justified in thinking that as a result of the last national election they had definitely rejected socialism, they are now awakening to the fact that they were grossly misled. Since the 4th of March we have had proposed by the Chief Executive and the Congress has enacted more out-and-out socialistic legislation than has ever been enacted in a similar period by any major power other than Soviet Russia.

It is interesting to note that Socialism, Communism, Fascism and Hitlerism predicate their success on the necessity of eliminating the influence of the so-called "middle class" of a people. In America, as in most other countries, the so-called "middle class" comprises not only the majority of the people but it is also from the middle class that the major improvements in living standards emanate. They form the backbone of every modern government with the exception of Soviet Russia.

For me to say that the "new deal" is dependent for its success upon the elimination of the middle class of the American people by forcing those now comprising the

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## Tugwell Cont'd

President Roosevelt is establishing, at this most critical period, an enduring pattern of administrative conduct. A lesser man, a self-aggrandizing, humorless one, a person less gifted with administrative talent and less eagerly hungry for wisdom, a dogmatizer without the experimental attitude, would merely have aroused false hopes which his accomplishments would have destroyed. The new design, with its unavoidable stress on vigorous governmental administration, possesses promise of endurance because it found precisely the right man. He is creating a lasting standard of administrative conduct below which none of his successors will dare to fall.—*Extracts, see 2, p. 288.*

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by Hon. Robert F. Wagner

U. S. Senator,  
New York, Democrat

I BELIEVE that the depression occurred and has been unduly prolonged because we were trying to meet new issues with outworn remedies, with devices that served well in their day, but could not last forever.

Let us make a brief excursion into history. During the nineteenth century our primary economic job was to explore the continent and uncover its natural wealth. This could not be done co-operatively, nor according to any well-thought-out plan. It had to be done by pioneers, by hard hitting, free lancing people who started out alone across vast plains and built small, isolated places of shelter at widely separated spots. The need for this kind of work encouraged a philosophy of "every man for himself," of extreme individualism and reckless daring. Such individualism worked well when our whole society was on a local basis and when business was done on a small scale. Each town was more or less self-sufficient and it did not make much difference to one part of the country what was happening in another part. Every one had to swim by himself or sink.

The second economic job during the past century was to improve our machinery and technical methods so as to produce more goods on the farm and in the factory. In this we succeeded as admirably as in the task of conquering the continent, and soon came to lead the world in the production of goods. Now we are in the twentieth century, and we face a great riddle—Why is there so much poverty in the face of such great progress? Why have not our mastery of the continent and of machines brought any assurance of economic welfare? I am firmly convinced that it is because pioneer individualism and mechanical progress alone, important though they are, cannot solve the economic problems of today.

Industries are no longer on a local basis. Many of them have become so large that they cover the entire

country. In other instances, due to specialization, the entire national supply of particular products is grown or manufactured in a single locality or section. In still other cases the separate parts of a single product are made by many different businesses which are not under a unified management. As a result, our whole economic system has become so interconnected that it functions as a single delicate mechanism. Every part must work in perfect co-ordination. If one part weakens, the disorder spreads immediately to the whole machine.

Under such circumstances it is disastrous for us to cling to the pioneer methods of 75 years ago, for us to encourage business men to work in the dark at cross purposes. And it is equally disastrous for us to keep emphasizing improvements in the technique of production without considering how to plan nation-wide production so that the various parts of the machine will operate uniformly, continuously and for the public welfare.

The recovery act represents a constructive attempt to bring the law into line with present conditions. We are going to solve the economic problem of today with the same realism and directness which we applied to the problems of the past.

The new law does not contemplate compulsion at all. Business men, those most familiar with the industrial problems of today, are given every opportunity to think, to plan and to act. Nothing is done to substitute government for business, or to relieve industry itself of the prime responsibility for economic recovery. I have always placed faith in voluntary action. I have never believed that a single centralized agency alone could possess the wisdom necessary to solve the infinite variety of economic perplexities which face us today. Business men must put their own shoulders to the wheel, and I am confident that they will do so willingly, speedily and wisely. The Government should serve primarily as an umpire and coordinator. It should utilize its broader viewpoint in order to prevent harmful practices, whether these be the result of unfair attitudes or of inadequate knowledge.

However, the Government is not without power to compel action in the few cases where righteousness and reason fail to produce results.

This reserve compulsory power is made absolutely necessary by the economic situation. Orderliness must extend over the entire Nation if it is to be effective anywhere. The idea of control by law is not radical. Enforcing co-operation is no different in principle from prohibiting co-operation and we have done the latter during the past 40 years under the anti-trust laws. If the public welfare justified one, it certainly justifies the other.

Nor is there anything radical or un-American in the policy of the act in regard to wages and hours of labor. We have always admitted the right of Government to regulate a limited group of public utilities. We said that they were affected with a public interest. Today, with over 15 millions of unemployed and with destitution

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## Hatfield Cont'd

middle class into industrial slavery or industrial servitude may seem harsh. Yet a careful reading of the catechism of the proponent of the "new deal" written and published since the inauguration of the present Chief Executive permits of no other belief.

It may be of interest to know from whence this "new deal" emanates. It may even interest the legislative leaders of the democracy to know from whence they may secure now an outline of the "new deal" which they will be expected to support, and how, through the working of the "new deal," the people of the United States are to be forced into socialism or a socialized society.

Socialism to be successful must have a dictator—a dictator in name and fact. Thus there is a common ground for Socialism, Communism, Fascism, and Hitlerism. They are all predicated on the belief that through the manipulation of a few, or the hypnotic power of a few, the few can force the many to live as the few believe people should live.

An indication that the views of the so-called "Brain Trust" are incorporated in the recovery of industry section of the national industrial act. Herein we find this language:

"The President may establish an industrial planning and research agency."

Compare this authorization with the following citation found on page 100 of Professor Tugwell's book:

"American institutions would necessarily require great changes in the system—such, for instance, as the establishment of organization for national planning and control."

We are told by the legislative sponsor for the recovery act, that one of the prime purposes of the act is the elimination of competition, and we find, on page 130 of Professor Tugwell's book, the following:

"Whether they operate under single management or not, business men have learned that competition, in most of its forms, is wasteful and costly, and they are stubbornly opposed to its reestablishment."

Control and governmental direction of capital is one of the fundamentals underlying the operation of the "new deal." Control of capital is provided for in the dictatorial control of industry, the dictatorial control of agriculture, and the dictatorship to be established over the railroads.

Again we find the influence of the so-called "brain trust," in the book of Professor Tugwell, on page 136:

"A better regulated flow of funds into industry which could use capital effectively and continuously might correct the difficulty. But how shall we achieve such regulation so long as we insist on competition, on voluntarism, and on the sacredness of the right of each to do as he sees fit with the property to which he holds the title?"

What will happen to the individual initiative of the millions of our people who through self-sacrifice on their part have toiled long years in an industry in the hope that their knowledge or their skill would soon result in promotion which would permit of better living conditions,

better conditions for themselves and for their families?

What incentive is left to the many thousands of young Americans still in school or college if the Congress of the United States is to socialize American industry and virtually place a bar against the elevation of young America to profitable employment?

We are told that this socialization of industry has the approval and support of the United States Chamber of Commerce and of the various manufacturers' trade associations. We are told that manufacturers are willing to pay this price in order that they be permitted to set aside the provisions of the Sherman Antitrust Act and the Clayton Act.

However, personally I believe that manufacturers have temporarily been blinded by another presumed fact, that is, that there will be no new developments with which present-day manufacturers will have to compete. Consequently those who now possess wealth in the form of control of industry will be guaranteed profits, which, of late years, they have not received.

From whence will these profits come? There is but one source, and that is the general public. Therefore, the general public, or the consumers of our country, through the action of the Congress of the United States, inspired and directed by the Chief Executive, will be bled white that owners of industry may temporarily prosper. Again we come to the well-known claim of the Socialist and the Communist.

In order to make such un-American doctrines prevail in America, it is essential that the workers and the farmers be arrayed against the property owners. Two years hence, when the Government will supposedly lift its heavy hand from the control of American industry, those who would socialize America will be able to point to the control which property owners presumably had over the Congress of the United States; they will be able to point to the guaranteed profits in the form of dividends or improved asset value of large and controlling plants in various American industries; they will be able to point to the development of trusts such as America never before witnessed.

Last May the securities of the key American industries increased in quoted value many millions of dollars. The quoted value of some securities increased more than 100 percent without the physical property or the balance sheets of such concerns being much different from what they were prior to the inauguration of the "New Deal."

Who is responsible for the rigging of the market, may I inquire? The answer is evident to those who will visualize the results of the legislation proposed by the Chief Executive, acting on the inspiration of what is known as the "brain trust."

Bankers and speculators, some of whom may be more conversant than others with the plans of those now in control of the Government, to my mind, are gambling that with guaranteed profits to the few, through the exploitation of the many, they will be able to unload their

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Wagner *Cont'd*

threatening to undermine the very stability of our institutions, we recognize that all business is affected with a public interest. It is with this spirit of national unity, with this realization that we must fight the depression and not each other, that we are going to supplement the express provisions of this new law and regain our economic health and strength.

The recovery act is not a radical attempt to regiment all industry under a bureaucratic governmental board. There is nothing radical in the proposal that those who drive their machines through the highways of industrialism shall maintain standards of health and decency and observe the rules of the road which they themselves are to be allowed to formulate. There is nothing shocking about the proposition that we cannot have prosperity so long as 45,000,000 producers engage in blind, ruthless and ruinous warfare among themselves.

We are not doing anything radical when we tell men upon what terms they may engage in business, and outlaw them for failure to comply. It is not radical to prohibit the degradation of women through shamefully low wages and the crippling of children through excessive work. It is wrong to take the steps necessary to insure that men who want to work shall not starve.

This law is not a measure designed to turn the country over to the giants of industry. It is true that the 200 great corporations need this law. But it is needed still more by the small business man and the laborer, who for the first time are given a voice in industrial government, with all the force of the United States Government to support them when they are correct. It is needed still more by the consumer, whose interests will be adequately protected under presidential supervision of the codes of fair competition.

There is no validity in the claim that the act is too vague to offer any guides to action. I maintain that it offers the best possible guidance—the measured judgment coming from the united counsel of business men all over the country. They will set the standards and the pace. The function of the Government will be to protect rules of efficiency and fairness from the devastating attacks of the exploiter and the inefficient.

There is no departure here from the spirit of our Constitution. The fathers of the Nation, who turned their backs upon outworn authority and set up one of the greatest experiments in history, would not say that our Constitution prevents constructive, well considered attempts to remedy an impossible economic situation.

The cry of radicalism is ever the last resort of those who stand frozen in the tracks of yesterday. It is a cry that can never put fear into the hearts of resolute men and women, nor blind intelligent people to the proper course of action.

The act centralizes authority in the President, with power on his part to set up the agencies and appoint the officers and employees necessary to carry out the new policy. He is authorized also to establish an industrial and research planning agency, to enlist the aid of the

Federal Trade Commission for necessary investigations, to modify or cancel any action taken under the bill, and to terminate the bill prior to its stated 2-year life by a declaration whenever the national economic emergency will have ended.

The constitutionality of the act rests upon three questions: (1) Are the regulatory measures proposed within the scope of Federal authority; (2) if so, are they of a type which our Constitution permits generally; and (3) is there an improper delegation of legislative power to the President?

The question of the proper exercise of Federal authority depends upon whether the bill confines itself to national matters, or whether it attempts to extend to matters which are of purely local concern. The answer is clear. The language of the bill expressly provides that any compulsory measures, such as the licensing feature of the bill, and any penalties for violation of the codes, shall be confined to business in or affecting interstate commerce. Thus no attempt is made to extend Federal action to an area of activity not covered by the commerce clause of the Constitution.

A survey of a few cases, however, shows that there will be ample power in the bill to deal effectively with industry as a whole. In the famous Shreveport case (1914) (234 U.S. 342) the Court held that the Interstate Commerce Commission had power to regulate the purely intrastate rates of a railroad, upon a showing that these intrastate rates were lower than the rates fixed by the Commission for similar distances between Louisiana and Texas. The Court did not base its decision upon the ground that an interstate carrier was being regulated. In fact, Congress has no power to regulate the purely intrastate rates of such a carrier if they do not affect interstate commerce. The decision rested upon the fact that the flow of goods between the two States was burdened when goods could be transported an equal distance within the State of Texas for less money. In my opinion, this is strictly analogous to a situation where the flow of interstate commerce into a particular State might be burdened by the practices governing the sale of goods of the same kind within the State by concerns doing an intrastate business. Thus if a local manufacturing concern in State A paid its labor starvation wages, and by this unfair practice sold goods in the local market for an excessively low price, this might be a burden upon competitive goods flowing in from another State, manufactured by an interstate business subject to a code of fair competition, including labor provisions.

The language of the present Chief Justice, then an Associate Justice, in the Shreveport case sustains a broad interpretation. He wrote that the authority of Congress extends—

To the maintenance of conditions under which interstate commerce may be conducted upon fair terms. \*\*\* This is not to say that Congress possesses the authority to regulate the internal commerce of a State, as such but that it does possess the power to foster and protect inter-

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**Hatfield Cont'd**

holdings on the dear public, at a later date, with tremendous enrichment to themselves.

These are the problems to which we should direct our attention.

Prosperity has begun at the wrong place—the stock market. The increase in stock prices is not based on an increased business activity of those industries represented by the stock. It did not begin with an increase in the speed of the turning wheels of industry throughout the length and breadth of this land; it did not begin with the coal miner, who is walking the highways today begging for bread and looking for work. The same condition prevails today in the industrial plants of America that prevailed before the recent legislation was enacted into law.

I am delivering this admonition that we may not depart from that broad, beaten path which has given to the average American more comfort, more protection, and more independence than has been enjoyed by the people of any other nation in the annals of history.

Rugged Americanism—the type of Americanism that built a Nation out of the wilderness—was developed by voluntary effort and the willingness for self-sacrifice on the part of our hardy pioneers.

No government agency settled our Western States, or built or developed our railroads, our industries, or the pioneering spirit of the American people, which alone has made America great.

My conclusion as to the situation which confronts the United States today is that the American people are looking, hoping, and praying, and no one more fervently than I, for restitution to come, but I cannot make up my mind that this restitution can come and be stabilized unless it be upon a sound constructive basis. I question the basis which has been adopted and which is threatened to be applied at the present time by the present administration.

To my mind, those who are temporarily dominating the policies of the Roosevelt administration are bent on the socialization of our industries and of our country. Whether or not the President will go with them remains to be seen. I say temporarily, believing that the Democratic leaders, having but one view at present, and that of securing as much at the political pie counter as possible, will soon awaken to the fact that they are competing for continued control of their own party with the modern-day Socialists, some of whom are anchored close to the Chief Executive at the White House.—*Extracts, see 3, p. 288.*

**by Hon. Bennett C. Clark**

U. S. Senator, Missouri, Democrat

FOR 40 years the Democratic Party has stood, without variation or shadow of turning, for the strengthening of the laws against trusts and monop-

olies and for their rigid enforcement. No party has ever dared, since the Sherman antitrust law was placed upon the statute books, to go to the people except upon a declaration in favor of the preservation and strengthening of the antitrust laws of this country.

I believed in my heart when I ran upon that platform before the people of Missouri in 1932 that the declaration of that platform stated but the simple truth. I had no doubt that it set forth baldly and without equivocation the policy which would govern the party if it were intrusted with power. I have never been of the number of those who believe that a platform is simply an entrance for getting into office. On the contrary, I have been taught from my youth up that a platform is a declaration of principle upon which honest men should stand during the period of their candidacy and upon which they are in honor bound to remain standing after their election. Title I of this bill, is a flat, open, and sweeping repudiation of the platform declarations of 40 years. It is a repudiation of the last national platform, of the State platform upon which I ran in Missouri, and of the personal platform upon which I was nominated.

There still comes back to me occasionally a fugitive memory of some Latin quotation which I heard my father use when I was a little boy. One quotation which he was fond of using was from Virgil: "Facilis descensus Averno"—easy is the descent into hell. Now mark you, in title I of this bill, how the initial premise of the destruction of the antitrust laws inevitably leads to other excesses abhorrent to our institutions and obnoxious to the tenets of the Democratic Party.

Assuming the premise of the destruction of the antitrust laws for the purpose of price-fixing designed to artificially jack up prices and you have no logical answer to the demand for embargoes to absolutely exclude the goods of foreign nations from entering at this artificial level. And then, the fact that we have emasculated our antitrust laws and that we have constructed another Chinese wall around our boundaries in the form of embargoes is used to enforce the demand that any citizen engaged in legitimate business may be prohibited from continuing it unless he can obtain a Federal license from an administrator appointed by the President. Having once started on the downward path by the reversal of our antitrust policy there is no logical stopping point short of a Federal dictatorship of every character and description of business, with an appointive officer possessing despotic power over every means of earning a livelihood, with power so sweeping as to wipe out every vestige of distinction between interstate and intrastate business. "Facilis descensus Averno."

In the language of a distinguished lawyer of my own State, the proposal for the suspension of the antitrust laws "will usher in and substitute for the reign of law the rule of men only. Not the equal power of law but the arbitrary will of the man with cash will govern."—*Extracts, see 5, p. 288.*

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## Wagner Cont'd

state commerce, and to take all measures necessary or appropriate to that end.

In the very recent Appalachian Coals case, Mr. Chief Justice Hughes recognized that in the present emergency the whole economic process is inextricably intertwined, in these words:

The interests of producers and consumers are inter-linked. When industry is grievously hurt, when producing concerns fail, when unemployment mounts and communities dependent upon profitable production are prostrated, the wells of commerce go dry.

This statement of the Chief Justice, sustaining agreements as far reaching as any proposed by this bill, expresses a viewpoint which I want to reiterate: that by substituting rational competition for ruinous warfare, the flow of commerce is not restrained, but immeasurably increased.

The second constitutional question is whether, granted that the Federal Government has jurisdiction, the regulations proposed are of a type permitted by our law. These regulations do not fall under powers specifically enumerated in the Constitution, but are based upon the general power of every government to provide for the well-being of its people. This power, whether we call it the sovereign power or the police power, falls to the Federal Government under the interstate commerce clause in national matters and to the State governments in local affairs. The only limitations upon this power are the fifth amendment, which prohibits the Federal Government from taking life, liberty, or property without due process of law, and the fourteenth amendment, which places the same restriction upon the States. In our long constitutional history there is not a single case which holds that due process has a different meaning in these two amendments, or that the sovereign or police power is of a different amplitude in the States from what it is in the National Government. The nature of the power, the type of social and economic situations which it may deal with, and the extent of the regulation which it may undertake in its own sphere is exactly the same whether exercised by the Federal Government or by the States.

Finally, the delegation of powers to the President does not violate the Constitution. It is true that legislative powers cannot be delegated. But in order that the wheels of government may continue to turn the Court has always sanctioned the use of administrative agencies to fill gaps in those statutes which set up reasonable guides to action. *United States v. Grimaud* (1911) (220 U.S. 506) is a leading case. It sustained a statute delegating to the Secretary of Agriculture the power to fix regulations governing the use of forest reservations for grazing or other lawful purposes and making violation of these regulations a penal offense. I do not feel that any particular case taken alone would be decisive as to this bill, but the cumulative effect of cases sustaining the rate-making power of the Interstate Commerce Commission (*Inter-state Commerce Commission v. Goodrich* (1912), (224 U.S. 195), the administration of the Pure Food and Drug Act (*United States v. Antikamnia* (1913) (231 U.S.

654), the flexible tariff (*Hampton v. United States* (1928) (276 U.S. 395), and many other similar situations, is entirely decisive.—*Extracts, see 4, p. 288.*

by Hon. Homer S. Cummings

U. S. Attorney General

We Americans are much given to quick generalizations. We have a weakness for headlines. In a certain fashion we realize that we are apt to be misled by them, but that does not seem to shake our faith in them.

For this reason we are apt to be bewildered when some movement like the "New Deal" comes along and seeks to treat ideas and principles as living and vital things.

It is interesting to note that already this movement presents, in some of its aspects, a slightly distorted picture, because of the mystic potencies and weaknesses of mere names. Would it assert new executive power, it becomes a "Dictatorship"; would it compel needed changes, it becomes a "Revolution"; would it put reliance upon the best intellects it can mobilize, it creates a "Brain Trust"; would it coordinate administrative functions, we behold a "Super-Cabinet"; if it seeks to combat crime by attempts to bring the police agencies of the country into closer cooperation, we find that "Scotland Yard" has been transplanted to America. Many of the current criticisms, as well as the excessive hopes it inspires, spring, I apprehend, very largely from this passion to generalize.

I do not share the view that these efforts will result in the creation of a new social order, even though I realize there are forces moving to that end. New social orders, like poets, are born; not made.

Pressure of necessity, and widespread distress have made us acutely conscious of serious social maladjustments and have created a condition in which new ideals and forces, long gestating, have a chance to be born; and, under conscious planning and leadership, they may give us something of a new order.

The unifying principle which lies at the heart of this modern movement is to be found in the very old concept of cooperation. Indeed, this idea seems so simple that its very simplicity conceals its tremendous strength and scope, as well as the basic part it has always played in the story of mankind.

"Rugged individualism" so stimulating in pioneer days or even in a period of economic adolescence, no longer appears to be adapted to a highly relational society that constantly calls for disinterested service and greater solidarity. The competitive ideal, so deeply ingrained in our law, does not seem to synchronize with considerations based on economic stability and social unity. Surely it is

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by David A. Reed

U. S. Senator, Pennsylvania, Republican

**T**HE codes of fair competition provided for in the National Recovery Act, once agreed upon and approved by the President, have the force of law. Bear in mind then that a violation of those codes is punishable criminally by fine and imprisonment. In other words, the wrongdoer is punishable by criminal process.

Now the administration insists upon adding to that, over and above the criminal liability, the licensing system, so that by the refusal of a license the wrongdoer may be punished further. His whole right to engage in his vocation is to be taken from him by Presidential order as a further penalty for the violation of these Presidential codes—either agreements made by the industry itself and approved by the President, or, in case of failure to make an agreement as to the terms of competition, the President alone is given power to establish the code. The violation of the code that the President establishes is made a crime; and, in addition to the criminal penalties, the President is empowered to subject that industry to license, and refuse a license to the wrongdoer.

In other words, as the sponsors of the bill explain, the ordinary processes of the criminal law are too slow and not sufficiently emphatic to enable the President to secure the prompt punishment of the person whom he decides to be a criminal in violating the regulations that he, the President, has put forth; and he is given this rather unusual power of denying to the citizen the right to earn his living at his ordinary lawful business if he, the President, alone and unaided, finds this person to be a wrongdoer.

We have been talking about great industries, such as the textile industry and coal; but we must remember that this licensing power and this code of fair competition extend throughout trade and commerce and industry, from the great motor-car industry and the great steel industry right down to the business of running a pushcart; and the President, under this bill, can establish a code of fair competition for pushcarts if he pleases.

The whole intent of the bill is to raise the cost of production in the United States. When that happens, we have absolutely handed the market to the foreigner because we cannot compel him to raise his costs in the same way. Consequently, it is only logical that the embargo power is proposed to be given to the President.

Now let us see how it will work in actual practice. The President, with all these powers loaded onto him, and all these additional duties put upon him, will be the busiest man in the world; it will be humanly impossible

for him or for General Johnson or for the higher officials who will manage the machinery we are setting up, to have any personal acquaintance whatsoever with the vast majority of questions that will come up. The President may perfunctorily sign papers from time to time, but the actual decision must necessarily be made by people to whom the power has been delegated by the officials to whom the President has first delegated it. I think that is self-evident.

I should say that I am quite as much opposed to sweatshops, and quite as much opposed to cutthroat competition, as is Senator Wagner, one of the authors of the National Recovery Act, and I do not think it necessarily follows, because I think his plan is an insane one, and is going to destroy industry more than it is going to help, that I am not animated by the same lofty motives that animate the Senator from New York. I am willing to concede to him the utmost of charity in his views toward long hours, low wages, sweatshops, and all that sort of thing; I concede the Senator has the loftiest ambition to better conditions. All I ask of him is that he be as charitable to me.

To come back to the argument, a moment's reflection on the power attempted to be given to the President, here must shock any reflective person. Remember, please, that under a lot of beautiful phrases are couched the most tremendous powers. We speak of codes of fair competition. It is only by indirection, and by admission of the sponsors of the bill, that we realize that that means not merely planting roses around the factory so that the conditions of employment will be pleasant, but it means fixing prices, it means apportioning output, it means creating, by the sanction of law, the same kind of pools and price-fixing conspiracies within an industry that we have been fighting for so long, for so many decades.

The steel business 25 years ago was tightly regulated by pools secretly made, which fixed the price of every product in every town in the United States, and fixed the proportion of business each factory might enjoy. We drove those things out of existence by a firm application of the antitrust laws, and a healthier condition resulted immediately. Now we are asked to restore that condition with the Presidential blessing; and that the intent is to make it possible to fix prices in that fashion is shown in the provision that "whenever the President shall find that destructive wage or price cutting or other activities contrary to the policy of his title are being practiced," then he may put on this licensing system.

This benevolent dictator who will control our destinies must fix prices in regard to the new wage scale he is going to fix. He must fix prices so high that those wages can be paid. Otherwise the whole industry affected will dry up. Wages have to be paid out of the prices received, and the prices will have to be advanced according to the wages paid.

This licensing scheme is to impose an additional punishment. It is said it is the life of the bill. It is not anything of the sort, because in other sections it is made a

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Cummings *Cont'd*

not visionary, therefore, to regard cooperation—voluntary or even induced—as the way of least resistance, if not the only way out; or as the one and probably only cure for ill-balanced production, for demoralization in competitive industry, and for any threatened collapse of our social order.

It was Bagehot, as I recall, who said that when an Englishman finds himself really thinking, he thinks he is sick, and I suspect that our own sudden compulsions to do stiff planning and hard thinking explain in part the fear that the country is much sicker than it really is.

Manifestly local government has proved in many ways quite incapable of meeting present emergencies. In the banking crisis, which occurred at the moment of inauguration, it was to the Nation's Chief Executive and to national legislation that the country had to look for relief. The colossal attempt under the National Recovery Act to spread labor and to raise wages and purchasing power, and, under the Agricultural Adjustment Act, to control crops and to make the farmer's product capable of supporting him, is a Federal effort to which the states and the people are lending willing support. The Department of Justice itself is the subject of demands for the Federal solution of problems hitherto thought the proper subject of local control—racketeering, kidnaping, and the whole problem of crime.

We are no longer a Nation whose problems are local and isolated. A bumper crop one hundred years ago was a boon where it grew, or, at the worst, in part a waste. Today it may be a national menace.

Today almost every economic and social problem is both local and national. Manufacturing, merchandising, transportation, agriculture, mining, oil production, problems of employment and unemployment, of strikes and the settlement thereof, are upon a national scale, or, if local in scope, are national in effect. Child labor in one state may destroy an industry in another. Crime is organized on a nation-wide basis. Neither the vigilance committee of the Old West nor the metropolitan police force of today can cope with this problem without national aid.

The radio, the airplane, the sound-picture have drawn us very close together. Three times within the past five months has the voice of the Chief Executive of this Nation reached, in intimate fashion, fifty million eager citizen-listeners in an instant of time. The President's far-flung appeal to the American people to cooperate with the National Recovery Administration was heard by the Nation in a single half hour, and long before the hour was out, the response began. Washington today is thronged with citizens coming, within a few hours, from the four corners of our country to apply for codes affecting their several industries; and the mails are surcharged with voluntary agreements sent to the President by employers of labor throughout the land.

The theory of our government has not changed; but the times have changed and invention has altered the scope and tempo of our life. I think it is hardly to be doubted that the average citizen of today senses his par-

ticipation in government more acutely and more personally than he has for a generation. In very truth, a Roosevelt and a radio have made a town meeting of America.

The field of administrative law, already clouded by much uncertainty, is being widely extended. The functions and limitations of the various departments and agencies of government have been taking on new aspects; and the attainment of administrative unity in this vast complex of powers presents a fascinating problem.

Nevertheless, there is no occasion to indulge artificial fears as to the ultimate outcome. There has not been the slightest fundamental departure from the form or nature of our Government or the established order. Our jural system remains intact. The Federal equilibrium has not been disturbed. The life, letter and integrity of the Constitution have not been impaired. Its checks and balances, its definition and division of authority, and its complete supremacy remain inviolate. The law of the land is still the law of the land.

Every new power entrusted to the President has been conferred by the people, acting through their duly elected representatives, and must be and will be exercised within the letter and the spirit of the organic law. Emergency legislation is recognized as such by the Government and will end when the emergency ends. The Congress has neither abdicated nor shirked its rights or its duties; it has functioned patriotically and efficiently to meet a national crisis. What is really happening is not an alteration in the established form or texture of Government, but a change in the spirit and application of Government.

If it were true, as some persons affect to believe, that the Congress by its recent legislation has created a Dictatorship, my duties as law officer, sworn to uphold the Constitution, would be arduous indeed. But we have done nothing of the kind. With us there has been no usurpation of power; no substitution of the executive will for the national will; no resort to force or fear; no repression of dissenting thought or criticism; no pretensions to omniscience or omnipotence. New laws and new powers!—yes—but they march with the sense of Justice and the needs of our common country. They rest on established and traditional sanctions. This philosophy of "Government in action" is based upon traditions and ideals fundamental in Americanism:—leadership, justice, moderation, co-operation, unity, confidence, faith, enthusiasm. These concepts are as old as America, as old as the basic idea of Democracy, and by them we shall find our way back.

The constitutional difficulties inherent in the recent legislation, I think, are grossly magnified. Our fundamental law is faced with no unusual stress or strain. During the World War, we put it to a far more radical test in emergency laws like those relating to Selective Service, Espionage, the War Industries Board, the Food Administration, the Control of Railroads, Industrial Mobilization, and the like. Now, as then, we face a war—a war to win back prosperity. Then, as now, the Constitution met the test and marched with the need of the times. Condi-

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crime to vary from the code. The licensing section makes the President not only the author of the law but the judge of its violations and authorizes him in his uncontrolled discretion to give capital punishment to any industry by refusing it a license. I say it is un-American and it conflicts with the most essential concepts of justice.—*Extracts, see 5, p. 288.*

### by Hon. Thomas P. Gore

U. S. Senator, Oklahoma, Democrat

To require a free man to take out a license to carry on a legitimate business in a free country is abhorrent to my conception of freedom itself. The two things cannot subsist at one and the same time in the same country. I would be as willing to trust the President of the United States or his nominees with that power as I would any other man or any other men living today or that ever lived within the tides of time. My convictions on this subject are impersonal. My objection to such license is impersonal. I shall resolve every doubt that I can in favor of his policies and his recommendations—grieved when I cannot do so, but license and liberty are, to my mind, incompatible the one with the other; they are mutually exclusive. I feel as deep a desire as any man for the success of the President and his administration.

The high-sounding declaration of purposes in the preamble or preliminary sections of the National Recovery Act does not create any additional power and vest it in Congress. Congress cannot by such a declaration invest itself with a power which it would not otherwise possess. The Congress of the United States derives its powers from the Constitution of the United States and not from the preamble of its own enactments.

The preamble of an act of the British Parliament rent the British Empire asunder. It created this Republic. I hope this Republic will not be dismantled by another preamble.

The supreme object of our Government, the object of our Constitution, the object of the first 10 amendments, was to place certain rights and certain liberties of the individual beyond the power, beyond the caprice of any government on this earth. If it has failed in that thing, it has failed in all things. I have often said, indeed I have said in the Senate, that one of the chief glories of our free institutions is that the Government of the United States, with all its power and all its majesty, with all its armies and all its navies, cannot strip a street urchin of the rags upon his back—not without the urchin's consent,

except upon the payment of just compensation. The Constitution is the sheet anchor not only of our free institutions but of all our liberties. It is the sheet anchor of our ship of state. If that anchor breaks, all is lost. The Supreme Court is the guardian of this ship of state, the guardian under our Constitution, the guardian unswayed either by popular agitation on the one hand or by Executive power or Executive favor on the other. Upon that narrow isthmus all our institutions, all our liberties, must stand or fall.

The police power relates to public health, public safety, public morals, and it is legitimate to exercise the licensing power in the enforcement or administration of the police power. In a sense that is penal in its character. This principle does not apply with reference to the power to regulate commerce. The courts and the cases make that distinction because the power to license is the power of life and death and when we revoke a free-born American citizen's license, we destroy his business without trial by jury and without due process of law.

Perhaps my convictions were hardened on this point during the late war when I was waging war against the late President, Mr. Hoover, for the extensive licensing power exercised by him under the food-control law. Under that law the wheat farmers of the country were robbed of \$1,000,000,000. The cotton farmers were robbed of half a billion dollars. Our farmers who produced livestock were robbed of \$1,000,000,000. The venerable Senator from Wyoming (Mr. Kendrick) will corroborate my statement when I say that that measure virtually broke and ruined every livestock producer in the West. Mr. Hoover's administration of that act beat our farmers down to their knees and they have never stood erect from that evil hour till this.

Obedience or the bowstring! That was the maxim of the sultan. It meant obedience or death. Licensing in a free country, licensing of freemen to carry on their honest business, is placing the life and the destiny of freemen otherwise than where they belong. The Supreme Court of the United States says the freedom of commerce between the States is the object for which the Constitution was adopted, and to convert that right into a privilege and require a citizen to obtain a license to carry it on is annulling both the letter and the spirit of the Constitution itself.—*Extracts, see 5, p. 288.*

Cummings *Cont'd*

tions and public opinion change from one era to another; and so does judicial interpretation.

It is this very flexibility which has permitted the Constitution to withstand strain and to endure. What is going forward is not, therefore, a violation but rather a vindication of our form of constitutional government.

Some of our citizens, pointing to the swift and even fundamental changes that have overtaken other peoples in other parts of the world, have freely predicted the break-up of the foundations of our government. These fears I do not for a moment share. Nor do I believe that they are entertained by any substantial portion of our people. As I look about, I see no swift and disturbing governmental changes amongst peoples long habituated to self-rule under democratic forms. A well established democracy is the most stable of governments. Its very structure admits of necessary adjustments in times of stress. As for ourselves, the heritage of liberalism stands us in good stead. Those who founded our government, and gave their lives for it, have not been forgotten. America is made of stout stuff and our democracy runs too far back into the history of the struggle for liberty to succumb merely because our governmental machinery is out of adjustment.

This is a period of national emergency that engages the faith and service of every man, woman and child in America. The spiritual resources of the Nation must be mobilized and the hidden reservoirs of abundance drawn upon. The artificial restraints that have dammed back the flow of prosperity must be released once more; that which was unplanned or selfishly guided must take its place in an orderly governmental process and a great cleansing and rebuilding program must go forward to its conclusion. If I mistake not, the people of America, without respect of partisanship or previous party affiliation, welcome this wholesome process with glad hearts.—*Extracts, see 6, p. 288.*

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by Donald R. Richberg

General Counsel, N. R. A.

**L**ONG ago men realized that political governments must develop as communities developed. The law of the family and the tribe disappeared as cities and states rose. Principalities and kingdoms gave way to empires and republics. New means of transportation and communication made the world constantly smaller, and knit more and more people together in common interests and in dependence upon an exchange of products.

Among those who have knowledge and understanding of the evolution of what we are pleased to call civilization, there might be serious debating over what form of government should be adopted to bring the instrumentalities of business into orderly cooperation. But, except among those unfortunate persons to whom educational opportunities have been denied or on whom education has been wasted, there can be no argument over the need of industrial government. It has become all too clear throughout the world in recent years that the anarchistic operation of the industries of a modern nation will make ineffective any political government and render it incapable of maintaining freedom and security for its citizens.

The rigorous control of industries and labor in Russia, Italy and Germany, for example, has not proceeded from the mere desire to apply a political creed, but from the economic necessity of establishing some form of government in industry, in the absence of which no political government could endure.

Those who faced this problem in America sought a solution more in keeping with our democratic institutions than the dictatorship in behalf of property and privilege which can be roughly described as Fascism, or the dictatorship in behalf of labor which can be described as Communism. In the search for a solution a large percentage of the influential leadership of industry in this country, together with a potent leadership in labor and politics, arrived at the concept of "self-government in industry." This phrase meant many different things to many people. But among practically all who have used it intelligently there has been one common idea—the organization of industrial government by those engaged in industry and not by outside forces.

The National Industrial Recovery Act was written against this background. Its emergency purpose is to put men back to work and to increase purchasing power. But such an emergency measure must be made the first step in a continuing process of stabilizing industry or it would be the mere alleviation of suffering with no effort to cure a chronic and dangerous disease.

Regardless of ultimate results we can say today that the operation of the National Recovery Administration has demonstrated again the extraordinary capacity of the American people to organize themselves and to govern themselves. It has demonstrated that we need not drift helplessly or surge impatiently into revolutionary violence so long as we have leaders with the vision and the courage to mobilize the energies of the American people.

The right of labor organization which is written into the Recovery Act is a simple statement of a principle of self-government which is everlastingly right and is the foundation principle upon which was written the Declaration of Independence and the Constitution of the United States.—*Extracts, see 7, p. 288.*

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by Clarence E. Martin

President, American Bar Association

So rapidly are the rights of the states waning, that legal writers are beginning to assert that soon they will be reduced to administrative districts. If that statement is true, our republican form of government is tottering and social democracy is in the offing for America.

Want of a proper conception of the social functions of government, lack of interest upon the part of the people in the activities of government, attack on personal and property rights by demagogues seeking political preferment, inability of officials to adequately and properly perform the duties of high office to which they have been elected, legislative incompetency, inertia and neglect—these are the reasons which induced the effort by the man on the street, who knows little of the niceties of our Constitution, seeking social betterment or political reform, to turn his eyes toward Washington. He sought relief, even though he must first create the right.

The commerce clause was resorted to. Judicial determination was not lacking. Certainly the right to its use has been upheld, when the purpose of legislation was not actually the protection of interstate commerce, but was intended for the purpose of providing a solution of some social or even local problem, as for instance the operation of lotteries and examination of foodstuffs. It would be unfair to say that resort to the commerce clause has not had its advantages. But the disadvantages accruing have outweighed the advantages; the basic and fundamental doctrine of dual powers was disturbed.

The use of the commerce clause, however, had its limitations. Through its use, no direct raids could be made on the federal treasury. Some other dynamic force was needed. Possibilities for federal development were found under the general welfare clause. That development has been potential, pithy, effective.

I need not recall to mind the so-called progressive movement of the early years of this century, when one who opposed any legislation proposed in its name became known as a reactionary and the enemy of matters substantial in the body politic. Then it was that the social workers moved to Washington and then it was that the general welfare clause was discovered. The grant-in-aid statutes are the result.

These acts were the beginning of national aid to state projects and state dependence upon the national treasury.

The grant-in-aid laws, based upon the economic fal-

lacy that the local government was getting something for nothing, made the people nation-conscious. They became federal dependents. When the states became involved financially and were unable to finance the demands for relief of their poor, the general government was appealed to and diminishing local power was the consequence. The greater lesson that can be urged at this moment is that the general government can become involved in the same manner and by the same method. Its treasury, too, can be emptied.

If any of the states have permitted municipalities within them to become indebted beyond their power to pay—and they have; if large and populous cities have been misgoverned and their treasuries looted to fill the coffers of unscrupulous politicians—and they have; the state, which created them, having given the power, must assume the responsibility.

This nation consciousness, this federal dependent feeling, confronted the general government when the recent extra session of Congress convened:

The people have taken the word of our constituted authorities that, because of financial stress and economic emergency, recovery legislation is necessary for temporary purposes, for a limited time, is experimental in its nature, and is intended as a narcotic or anti-toxin to bring the nation back to normalcy. When the nation recovers, and it will, it will resume its normal practices and the administration of the medicine being needed no longer, shall cease. This promise is refreshing, for despite the recognition in the industrial codes of the broad principles of social justice and their application—an outstanding advancement, this character of legislation, as a legal fixture, would reverse the American method of legal thinking, destroy individual initiative, and, by indirection, not alone invade the province of, but completely destroy the fundamental rights reserved to the states.

The Child Labor Amendment is the broadest grant of power ever attempted to be given to the National Government. No reason exists for the grant. It can be used to prevent children under eighteen from laboring, as well as nationalize education and be the basis for required military training. It is not a Child Labor Amendment. It was not so intended. Although advocated by many well meaning people, it is a communistic effort to nationalize children, making them responsible primarily to the government, instead of to their parents. It strikes a blow at the home. It appears to be a part of a definite, positive plan to destroy the republic and substitute therefor a social democracy. It is opposed to the ideals of our American institutions. Every legislature which ratified it, admitted by its action that it was incompetent to handle a matter completely within the realm of the states. Child labor is inhuman. No laws can be too stringent in terms nor enforced too strictly to abolish it. Its existence is a blot upon the escutcheon of our civilization. But it is unfair, un-American, to pass this subject on to the national sphere, where it does not belong.

The movement towards ultimate destruction of state sovereign powers is well on its way. Not a campaign oc-

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by M'Cready Sykes

Editor, "Commerce and Finance"

**A**MID the swift and universal tide of confidence and co-operation that has swept so compellingly through the country in response to President Roosevelt's leadership, one catches now and then a voice of heckling protest, a suggestion, as some bewildered politician puts it, that "we don't want a dictator." Over a fair part of the world, this is the day of dictators. Italy, Russia and Germany make up a substantial part of the civilized world, and whether they like it or not are trying to get along under dictatorships of varying kinds, and one occasionally hears the suggestion that what we need here is a dictatorship and that we are having the beginning of one now.

It is therefore worth while that we should put ourselves right on this subject of a dictatorship, and consider whether the altogether health-giving and invigorating political experience we are going through has within it anything whatever of the nature of a dictatorship. For if that be the fact, then an important part of the English-speaking peoples of the world are indeed venturing on a new era; they are doing the kind of thing that has always been abhorrent to the English race, and entering on a path utterly at variance with what, fortified by long study and observation, they regard as anathema.

What characterizes the power of Stalin is that he holds it independent of and irresponsible to the will of the people of Russia. He and the coterie about him are in actual physical command of the material fortunes of the Russian people, having control of their goings out and their comings in; the power, indeed, of life and death, subject to no requirement of approval on their part. They need not vote him the taxes to maintain his government, nor have they any organ for even the expression of their will, much less for its enforcement.

Mussolini controls the army and navy and the police force and the entire civil and military power of Italy. He needs no vote of parliament to maintain his power, for all the instruments of power are already in his hands. Should a majority of the Italian people wish to end his rule, there is no way available by which, proceeding according to law and order, they may effect their will.

So, too, with Hitler in Germany. He begins his dictatorship with the suppression of fundamental rights guaranteed by the constitution, such as the right of freedom of the speech and of the press. The law-making body has abdicated its functions, turning over to the dictator the means of enforcing decrees resting on no mandate of the

people or the people's representatives. It is announced that the law-making body is to adjourn indefinitely, and it might as well.

These are dictatorships. They are in each case the rule of armed force, needing no mandate of the people or of the people's representatives to keep it alive.

For an ordering of government having some similitude to our present course we must look not to the panic-engendered experiments or ruthless seizures of power such as we see at work in Russia, Italy or Germany, but rather to the orderly and well thought out processes familiar to some extent in our own political experience and still more in the development of the stable and seasoned democracy of Great Britain. For dictatorships and all their works the English and their hardy Scot kinsmen have as enduring an abhorrence as have we in the United States. But without the spur of an extraordinary crisis, and moved only by a common sense urge to get the work of government promptly and efficiently attended to, they have long been accustomed to a broad sweep of power in the executive.

Continental countries, even republican France, are quite content to recognize such inherent powers in the executive. English-speaking peoples will have none of it, nor is there anything to suggest that the American people is remotely likely to turn to anything of this sort.

This does not mean that broad powers in the executive, not merely to execute the laws, but to make ordinances for completing the laws, much broader powers than we have been accustomed to, have not been exercised here, and are not habitually exercised by the British executive.

The fundamental distinction is that these powers have their origin in acts of parliament. Between powers exercised by virtue of a prerogative inherent in the executive, such a power as has been seized by the dictators of Russia, Italy and Germany, or abdicated to them once for all by the law-making body, and special authority granted from time to time as occasion arises by the representative law-making body, there is all the difference in the world. Powers of the latter kind are one of the most familiar incidents of the government of England. The only wonder is that we have got along as well as we have without doing more of that kind of delegation of power ourselves.

It is by these orders in council, resting for their authority on grants of power from parliament from time to time, that a substantial part of the government of England is carried on.

These powers thus conferred nominally on the crown belong of course to, and are exercised by, a responsible ministry. The extent of the field of government by executive ordinance has grown tremendously in England during the past fifty or seventy-five years "in relation to such things as local government, public health, pauperism, housing of the working classes, education, tramways, electric lighting and a host of other things."

In times of great exigency, such as war or a severe economic depression of the kind through which we have been passing, it is an altogether healthful resort to vest power in the executive to enact ordinances to complete legislation.—*Extracts, see 8, p. 288.*

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**Martin Cont'd**

curs without promises on the part of Congressional candidates to advocate adoption of measures and laws, any one of which means federal assumption of state prerogatives and doles from the federal treasury. Not a novel or intricate governmental problem is presented, unless some set of individuals or some organization proposes federal assumption, control and enforcement. Indeed such urging is frequently regarded as the most appropriate and simplest answer—let someone else do it. The developed application of that sentiment is the beginning of a tyrannical form of government. Yet the movement has grown into a national trend and has developed a new school of thought, whose adherents would promulgate a new philosophy of government.

This new philosophy proceeds upon the theory that our civilization is a failure, and, therefore, upon the supposition that the Constitution, if not completely in the discard, has reached the stage where it is a great, but unbinding, charter of principles. We are told, by this school of thought, that government is dynamic, restless, growing; that its fundamentals are changeable; that, as we have now emerged from a rural and undeveloped state of society, our individualistic system must give way to a broader scope of combinations and property control; that there must now be an uniform expansion and enlargement of the social functions of government; and that, as local performance is circumscribed and inefficient, the state governments, as the sovereign depositaries of reserved powers under our system, must be disregarded, and a nationalistic theory adopted.

I challenge the accuracy of the premises and the conclusion of that school of thought. True, government is constantly changing—the tomes of statutes and of decisions in our libraries are mute witnesses of that fact. But they, also, are living witnesses that the basic fundamentals of our civilization are enduring.

In substance, we are told by this school that the nation should disregard the advice of the immortal Washington, in his Farewell Address, when he urged us to resist the spirit of innovation upon the principles of the Constitution, "however specious the pretexts," and warned us that time and habit were necessary to fix the true character of government, as well as other human institutions. We are asked to forget the homespun thought of Thomas Jefferson, who proclaimed that one of our fundamentals of citizenship was "the support of the state governments in all their rights, as the most competent bulwark against anti-republican tendencies."

This philosophy must admit the obvious fact that when the powers of the state are destroyed, this will be a government administered from the top down, whatever its form. Indeed, carried to its logical conclusion, its adoption would pave the way for the substitution of state socialism for social justice, and social democracy for our republican form of government. Shall we exchange the fleeting conceit of the times for the experience of over a century and a half?

Only by combatting that false philosophy of govern-

ment; by banishing incompetents from political office; by securing an intelligent, vitalized enforcement of the criminal law; by recognizing the basic principles of social justice; by insisting upon elimination of local extravagance; by paying the present debts; by rejecting all grants in-aid—all federal financial help—can the states retain their places in our body politic and adequately exercise their reserved powers under the Constitution.

Let us, then, inculcate a faith in, a love and an admiration for, that system of government so long responsible for our tranquility at home and greatness abroad. Let us bring back a recognition of that principle, essential to the success of stable government—that the performance of authority be placed where it belongs and that the dependable agency be held responsible for its proper exercise.—*Extracts, see 9, p. 288.*

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**by Augustus O. Bacon**

Former U. S. Senator, Georgia, Democrat

It is a fact not to be disguised that the actual exercise of power by the executive branch of the Government in this day exceeds the bounds originally contemplated for it by the Constitution.

It is a remarkable fact that in England, a monarchy, not only has the King abandoned all pretense of any control over legislation, but he has practically surrendered the exercise of executive power. The constant progress there has been toward restraint of executive power in the Crown and the enlargement of the power of the legislative branch of the Government, until now practically all political power, both legislative and executive, is in the control of the elected representatives of the English people. It is a fact still more remarkable that in the United States, a nation born of a rebellion against a monarchy, and designed distinctively as a representative Republic, the President has not only retained all original executive power and greatly enlarged it, but there has been a no less steady progress in the direction of the absorption of legislative power by the Executive and of its practical surrender in large degree by Congress.

There is no Senator or Representative who in an unbiased expression will say that the exclusive legislative power of this Government is now exercised in the two branches of Congress. It must be admitted by all having knowledge of everyday occurrences that the most influential and controlling part of the legislative power of the Government is at the other end of the avenue—in the

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# PRO

by Henry F. Stimson

Former U. S. Secretary of State

**W**HEN we come to examine the work of our houses of Congress, we find that there is a strong prevalence in both houses of what we may call local over the national point of view. In a body which is supposed to represent the nation as a whole, we find that the interests of the nation are being constantly subordinated to local interests.

It is impossible to exaggerate these local characteristics of Congress. They pervade all that it does, down to the insignificant details of a congressman's work. He has become the attorney for his district. His political life depends on it. If he chooses to offend the nation for the sake of his district there is no way by which he can be punished by the nation. To the nation he is not responsible and he may be returned year after year in the face of the most flagrant disregard of national duty. In other nations the executive is the leader of legislation. The man or men who are to be responsible for enforcing policies and laws take a leading part in devising and framing them. In the United States alone the executive is shorn of all chance for effective co-operation in the process of lawmaking, and under the influence of a stubborn political tradition, he is jealously watched to see that he does not transgress this dead line of separation. In other nations, the executive not only has the unquestioned and regularly exercised right to frame and introduce his own bills, and to support them upon the floor in debate, either in person or through his ministers, but in some classes of legislation his right of initiative is exclusive, and amendment of his measures is carefully limited.

In Switzerland, for example, where the seven Federal Councillors who compose the executive, are not members of either house of the legislature and cannot vote therein, and in many other respects bear much the same relation to it as do our President and Cabinet to Congress, they nevertheless exercise tremendous power of leadership in legislation; they draft and introduce bills; they have the privilege of debate and are permitted to take charge of the conduct of their bills, and when amendments are decreed in the bill they are permitted to draft them.

Such co-operation results in bringing to the aid of the legislature the experience of men who, necessarily, view matters of government from the standpoint of the whole nation. Nowhere more than in the United States is the executive the representative of the nation at large. Not only do his duties impose upon him constantly the necessity of a nation-wide viewpoint, but he is, in this country, also directly responsible to the electorate of the whole people.

Our constitution provides us with an executive upon whom these administrative duties are irrevocably developed and in the growth of a century's political traditions, instead of this executive becoming atrophied or weakened in his position, his hold upon the people has become

steadily stronger. The fear of our executive which was prevalent a century ago and was frequently voiced by Mr. Jefferson, and which doubtless resulted as a reaction from the then recent tyrannies of monarchial government in neighboring countries, has now been succeeded by an entirely different feeling. Instead of looking upon him as a possible tyrant, as Mr. Jefferson did, we now look to our president and our governor to protect the individual citizen from the oppression of the huge combinations of private business that have grown up recently among us.

Having stubbornly kept our present executive out of Congress, what has been the result? What method have we developed for performing this vital duty of sifting and sorting our attempts at legislation and bring order out of chaos? We have produced a system of committee government under which a part of this selective process is ostensibly done by certain standing committees of the House and Senate.

Tremendous powers are exercised by men who, neither as committeemen nor congressmen, are responsible to the country at large. We have all seen cases of bills recommended by the executive, recommended by the platform of the party in power, earnestly desired by the people of the country at large, and yet which were sifted or distorted in Committee. As compared with the leadership of the Executive obtaining in other nations, it substitutes a truly "invisible government" for the responsibility of an officer working under the scrutiny of the fullest publicity; bearing the mandate of the whole people and directly responsible to them.

I believe that by far the greatest part of the inefficiency and attendant corruption from which we are suffering in our federal and our state governments today can be directly traced to that venerable heresy which keeps the influence of our executives out of our halls of Congress and assemblies. The theory upon which it is based has been completely abandoned in all other homes of effective parliamentary institutions. It lingers on here in the United States, the fount of most of our troubles, yet cherished as if it were a veritable ark of the covenant.

The harm which it is doing here is becoming constantly more acute. The legislative problems of today are becoming rapidly more complex. The inability of Congress, even with longer sessions and extra sessions, to get through its work is becoming more evident with each year. Very much of the congestion of its business, which is so complained of today, comes simply from the fact that under modern conditions a system without leadership is becoming more impossible daily.

There is no sound foundation for the fear that the reform in question would at all diminish the dignity or power of Congress. On the contrary, executive cooperation in legislation would enhance the importance and opportunities of legislators. Congress would become a more truly deliberative body. It would be freed from many of the administrative burdens which its separation from the executive now tends to improperly impose upon it and

*Continued on page 286*

**Bacon Cont'd**

White House. Intending that this article shall so far as practicable be impersonal, it is proper to say that this statement is not intended to apply, except in degree, to any particular occupant of the White House. The Executive has for many years, in the effort to control legislation, continuously encroached upon the legislative branch of the Government, thereby practically in part usurping its powers.

The studied effort of the framers of the Constitution was to concentrate in the Congress all legislative power, giving it even the power to override the veto of the President. Not only was Congress given "all legislative powers" under the Constitution, but in that instrument almost all the powers of sovereignty were enumerated and placed within the control of the legislation of Congress. It was the design that legislation on these great matters should be by Congress, without control, direct or indirect, by any other official. These great powers thus confided exclusively to Congress to legislate upon are found in the first article of the Constitution. Among them are the following powers:

To lay and collect taxes.

To provide for the common defense and general welfare of the United States.

To regulate commerce with foreign nations.

To coin money and regulate the value thereof.

To define and punish offenses against the law of nations.

To declare war.

To raise and support armies.

To provide and maintain a navy.

To suppress insurrections and repel invasions.

Each of these powers thus given to Congress for legislation, besides others of which I have omitted to make mention, is a distinct power of sovereignty—the powers which kings with sovereign power personally wield; and in addition thereto, after enumerating these powers, there is the following comprehensive grant of power to Congress:

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

By this not only is Congress clothed generally with all power of legislation necessary to carry into effect all the powers granted to Congress, but Congress is further and exclusively vested with the power to make any and all laws necessary and proper for the execution of any of the powers of the Government of the United States and of any department of the Government, including both the executive and judicial departments. When to these great powers is joined the power to impeach and remove from office any officer of the Government, from the President to the lowest civil officer, little could be added to completely invest Congress with every attribute of the sovereignty of Government.

Compared to this great array of sovereign powers granted to Congress, those powers conferred upon the President present a most striking contrast. In the powers

given him by the Constitution he has, in conjunction with the Senate, the appointment of officers and the making of treaties. Outside of that substantially his whole power as founded in the Constitution is embraced in one line: "He shall take care that the laws are faithfully executed." There is his great office, and that is what the Constitution intended should be his great function. "He shall take care that the laws are faithfully executed." He is, as has been said, the organ of communication with foreign governments; but his great function, that which gives dignity and power to his office, is that he is to execute the laws; and beyond this the only prerogative of sovereignty with which he is exclusively vested by the Constitution is the pardoning power, and even that is denied to him in cases of impeachment by the House and conviction by the Senate.

The great and wise men who framed our fundamental law stood in the century next removed from that which had witnessed the culmination of that great struggle from the events of which they gathered the lesson that the power to make laws for the government of a people is safest when not controlled by one man, but when lodged exclusively with their elected representatives.

They had learned from it that one man invested with such powers was prone to follow the bent of his own will rather than be guided by the wisdom of his counselors. They were taught by that history to fear that one so girt with power would grow great in his own conceit; that he would attempt to draw to himself all the authority of government, and that not only one born to the kingly office, but also one who held but temporarily the office of President might come to think himself compassed by "the divinity that doth hedge a king."

While they hoped that only good and wise men would be chosen to that high office, they forgot not the frailties of the weak nor the grasping ambitions of the strong. They guarded against the worst. They designed that in the hands of a weak Executive the Government should not fail, and that in the hands of one strong, self-willed and ambitious, there should not be imperiled the free institutions which they sought to establish. Therefore, while they created a great and noble office, one within its legitimate sphere the greatest and noblest of all the earth, they designed and provided that, while he should execute the laws, those laws should be made, not by him, but exclusively by the Congress.

While they invested the President with all the great dignity and power of the Executive office, every power confided to him was most carefully restricted and guarded.

While they gave him the power of the veto, they gave the Congress the power to override his veto by a two-thirds vote.

While they gave him the power to make treaties with foreign nations, by and with the advice of the Senate, they refused to him the power to make such treaties without its participation.

They gave him power to pardon those convicted of

*Continued on page 286*

*Stimson Cont'd*

its attention and time would be concentrated upon the real purpose of legislation.

Under the inspiration of Hamilton's genius, there was cooperation during the first administration of Washington, but in a few decades the two branches gradually drifted apart. President Wilson, reading his message in person in the Hall of Representatives, finely vindicated the theory of cooperation and made a return to the sound precedent of Washington, but in order to make the reform permanent and effective there is needed the careful construction of machinery by which cooperation will become normal and natural and not dramatic and extraordinary.

By statute or joint resolution, both Houses should be forbidden from adding items to the executive budget as presented, unless with the President's concurrence. Or, in the alternative, the President should be given the right to veto individual items in the appropriation bill.

The President should be given the right to introduce bills and these bills must be given preference above all other bills, except appropriation bills, on the calendars of both Houses and amendments to them be allowed only upon the floor of either House.

The members of the President's cabinet should be given by statute or joint resolution, the right to appear on the floor and discuss these and other bills of general legislation so far as they affect their respective departments.

No one of the foregoing proposals would require constitutional amendment with the possible exception of the proposal to give the President the veto power over items in the appropriation bill, and even for the existence of this power though long unused, there can be made a strong argument from the constitution. The proposition to give cabinet officers the right of the floor in debate and for the purpose of interrogation is one that has been discussed in Congress since 1864. I believe that it would remove much of the present friction and jealousy between Congress and the executive departments; that it would greatly expedite consideration of legislative business affecting those departments and that, beyond all this, it would bring into the tangled skein of local interests the viewpoint of officers charged with duties broadly national in their scope and character.

Taken as a whole, I believe that the adoption of a system based upon these propositions would terminate much of the dangerous criticism which is now aimed at our system of representative government.—*Extracts, see 10, p. 288.*

*Bacon Cont'd*

crime, but denied the power to pardon in cases of impeachment.

They gave him the power to appoint all civil officers, but the appointment is only perfected when confirmed by the Senate.

They made him Commander in Chief of the Army and Navy, but they left it to Congress to determine what should be the size and constitution of the Army and Navy, and whether there should be any Army and Navy. They denied him the power to appoint a civil officer, or any officer of either the Army or Navy, from the commanding officer to the lowest subaltern, unless each of such appointments should receive the confirmation of the Senate. They gave him no power to equip and maintain either Army or Navy for a day. They gave him no power to make war, nor can he to himself conclude peace. The power to make rules for the government and regulation of the Army and Navy is denied to him, and is expressly conferred upon Congress. It is evident that as Commander and Chief of the Army and Navy he is still but the executive arm, and that in that capacity he is himself, in every detail and particular, subject to the commands of the lawmaking power.

Finally, they made the Chief Executive, as well as every other civil officer, from the head of the cabinet to the most obscure civil official, subject to trial and removal from office, without appeal, upon impeachment by the House and conviction by the Senate, which is the great safeguard against encroachment and official misconduct.

These limitations thus set by the Constitution on the powers of the President are not quoted here in depreciation of the Executive office. As already said, it is as designed by the Constitution a great and a noble office—the greatest and the noblest of all the earth. But it is an Executive office, and to no one who has filled or who shall hereafter fill it is given any constitutional warrant to exercise directly or indirectly the legislative function.

There can be no condition more dangerous to the maintenance of free government than is found in the concentration in the hands of one man at the same time of both the executive power and practically the power to make the laws he is to execute. Whatever may be the form of government, when these two powers are thus concentrated in the hands of one man, the government is an autocracy pure and simple. It makes no difference in practical effect whether that one man himself decrees the law, or whether they are enacted in obedience to his dictation.—*Extracts, see 11, p. 288.*

## The Students' Question Box

### Replies to Queries on U. S. Presidents and the Presidency

Q. What is the shortest period ever served by a President of the United States?

A. One month. William Henry Harrison, of Virginia, the ninth man to be elected President, was inaugurated March 4, 1841 and died April 4 of the same year.

Q. How many Presidents have served two full consecutive terms?

A. Six. George Washington, 1789-1797; Thomas Jefferson, 1801-1809; James Madison, 1809-1817; Andrew Jackson, 1829-1837; Ulysses S. Grant, 1869-1877; Woodrow Wilson, 1913-1921.

Q. How many Presidents have been re-elected but have not survived to serve out their second term?

A. Two. Abraham Lincoln, first inaugurated in 1861 and again in 1865. Died April 15, 1865; William McKinley inaugurated 1897 and again 1901, died September 14, 1901.

Q. How many vice-Presidents have succeeded to the Presidency through death of the Presidency.

A. Six. John Tyler, succeeding William Henry Harrison, April 14, 1841; Willard Fillmore, succeeding Zachery Taylor, July 10, 1850; Andrew Johnson, succeeding Abraham Lincoln, April 15, 1865; Chester A. Arthur, succeeding James A. Garfield, September 20, 1881; Theodore Roosevelt succeeding William McKinley, September 14, 1901; Calvin Coolidge, succeeding Warren G. Harding, August 3, 1923.

Q. How many Vice-Presidents, having succeeded to the Presidency, have been continued in the Presidency by election?

A. Two. While serving the unexpired term of William McKinley in 1904, Theodore Roosevelt Republican, was elected President in a campaign against Alton B. Parker, Democrat. While serving the unexpired term of Warren G. Harding in 1924, Calvin Coolidge, Republican was elected President in a campaign against John W. Davis, Democrat and Robert M. LaFollette, Progressive.

Q. How many Presidents who have been defeated for reelection for a second consecutive term have again been nominated and elected?

A. One. Grover Cleveland, Democrat, was elected President in 1884 and was defeated for reelection by Benjamin Harrison, Republican, in 1888. Cleveland was again nominated in 1892 against President Harrison, re-nominated and defeated Harrison for the term 1893-1897.

Q. How many Presidents have been impeached?

A. One. Andrew Johnson.

On March 2, 1867, both houses of Congress passed over the veto of President Johnson, "the Tenure-in-Office-Act" in an attempt to restrict the President's power to remove office holders. On August 12, 1867, in disregard of this act, President Johnson suspended Edwin Stanton, Secretary of War. On December 12, 1867, when Congress had reconvened, President Johnson sent a communication to the Senate giving the reasons for his action. A move to impeach Johnson resulted and the House voted for impeachment. This meant that the House formally charged Johnson with misuse of his powers, and the case then went to the Senate for hearing and a vote on whether Johnson was guilty of the charges brought by the House.

After the case had been heard by the Senate a vote was taken on May 26, 1868. The vote was guilty, 35; not guilty, 19. Since a two-third vote is required, Johnson was, by a single vote, found not guilty.

Q. How many bachelors have been elected President?

A. Two. James Buchanan, elected 1856 served 1857-1861; Grover Cleveland, elected 1884, married Frances Folsom 1886.

Q. What state has furnished the greatest number of Presidents wives?

A. New York and Ohio have each furnished 7 wives of Presidents; Virginia, 5; Massachusetts, North Carolina, New Jersey, and Tennessee, 2 each; and Maryland, New Hampshire, Kentucky, Missouri, Georgia, Vermont and Iowa, 1 each.

Q. How many Presidents have been married more than once?

A. Five. Presidents Tyler, Fillmore, Benjamin Harrison, Theodore Roosevelt and Woodrow Wilson were all married twice.

Q. How many Vice-Presidents, who have not succeeded to the Presidency, have subsequently become successful Presidential candidates for their own right?

A. Three. John Adams, Vice-President, 1789-1797, President, 1797-1801; Thomas Jefferson, Vice-President, 1797-1801, President, 1801-1809; Martin Van Buren, Vice-President, 1833-1837, President, 1837-1841.

Q. Have two men from the same state ever served as President and Vice-President at the same time?

A. Yes. William Henry Harrison, Whig, and John Tyler, Democrat, elected President and Vice-President, respectively, in 1840, were both from Virginia.

## Acts of Present Congress Granting Powers to President Roosevelt

*Continued from page 267*

dependent Government commissions and corporations by cutting salaries, declaring furloughs and removing employees.

### The Emergency Railroad Transportation Act of 1933

Act of June 16, 1933 (Public Law No. 68). Under this Act the office of Federal Coordinator of Transportation is created. The Coordinator is to (1) divide the lines of the carriers into an eastern group, a southern

group, and a western group for the purpose of avoiding unnecessary duplication of services and facilities (2) to promote financial reorganization of the carriers and (3) to provide for the immediate study of other means of improving conditions surrounding transportation. The Act also amends sections 5, 15a, and 19a of the Interstate Commerce Commission Act.

Under this Act the President appointed Joseph B. Eastman, Federal Coordinator of Transportation.

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- 9—(Martin) Address, American Bar Association, Grand Rapids, Michigan, August 30, 1933.
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